

No. 89-1555

Supreme Court, U.S.  
FILED

10  
JUL 13 1990

SPANGLER, JR.  
CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1989

MARK E. DENNIS,

*Petitioner,*

v.

MARGARET L. HIGGINS, DIRECTOR,  
NEBRASKA DEPARTMENT OF MOTOR VEHICLES, *et al.*,  
*Respondents.*

On Writ of Certiorari  
to the Supreme Court of Nebraska

JOINT APPENDIX

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**Petition For Certiorari Filed April 5, 1990**  
**Certiorari Granted May 29, 1990**

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Note: A number of documents that are relevant to this appeal were printed and filed with the Petition for Certiorari. Pursuant to Rule 33.1, they are not being re-printed in this Appendix. However, for the use and convenience of the Court, the documents and the page at which they may be found in the Appendix to the Petition, are set out below.

## TABLE OF CONTENTS OF THE APPENDIX TO THE PETITION

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**Case Action Summary  
Supreme Court of Nebraska**

<i>Mark E. Dennis v. State of Nebraska</i>	88-205
2/26/88	Bill of Exceptions filed by Appellant Mark E. Dennis.
3/4/88	Appeal filed by Appellant.
6/14/88	Brief filed by Appellant.
6/24/88	Replacement Brief filed by Appellant.
8/24/88	Brief filed by Appellee State of Nebraska.
10/12/88	Reply Brief filed by Appellant.
1/10/90	Oral Argument heard.
2/16/90	Published Opinion filed. Affirmed in Part, and in Part Reversed. Boslaugh, J.

**Civil Docket****District Court for Lancaster County, Nebraska**

*Private Truck Council of America* 390-26  
*and Dennis Trucking v. State of Nebraska*

1/25/85 Petition (Equity) filed by Plaintiff Private Truck Council of America and Dennis Trucking. Case transferred from District Court for Douglas County, Nebraska on Motion for Change of Venue by Defendant State of Nebraska, et al.

2/6/85 Motion of Plaintiff to Certify the Class filed.

3/7/85 Motion of Plaintiff for Summary Judgment filed.

3/13/85 Motion of Defendants to Strike Plaintiff's Motion for Summary Judgment filed.

3/18/85 Motion of Plaintiff for Summary Judgment (3/7/85) stricken as premature.

3/22/85 Affidavit of Marion Sexton filed.

6/17/85 Order Granting Defendants' Demurrers and Denying Class Certification filed.

7/16/85 First Amended Petition filed by Plaintiff.

7/16/85 Motion of Plaintiff to Certify the Class filed.

8/15/85 Motion of Defendants to Strike filed.

8/27/85 Motion of Defendants to Strike Plaintiff's Motion to Certify Class filed.

8/28/85 Opposition of Plaintiff to Defendants' Motion to Strike filed.

8/30/85 Motion of Defendants to Strike Plaintiff's Motion to Certify the Class filed.

11/19/85 Order Overruling Motion of Plaintiff to Certify the Class filed.

12/6/85 Second Amended Petition filed by Plaintiff.

12/19/85 Answer to Second Amended Petition filed by Defendants.

12/20/85 Motion of Defendants for Summary Judgment filed.

3/5/86 Cross-Motion of Plaintiff for Summary Judgment filed.

3/13/86 Stipulation of Parties filed.

6/3/86 Each party's Motion for Summary Judgment overruled.

6/3/87 Trial held.

9/30/87 Order on Plaintiff's Second Amended Petition filed.

10/13/87 Motion of Plaintiff for New Trial filed.

1/29/88 Plaintiff's Motion for New Trial overruled.

2/26/88 Notice of Appeal filed by Plaintiff.



**Civil Docket**  
**District Court for Douglas County, Nebraska**

*Private Truck Council of America*  
*v. State of Nebraska*

- 12/17/84 Petition (Equity) filed by Plaintiff Private Truck Council of America.
- 12/27/84 Memorandum of Law in Support of Motion by Plaintiff for Preliminary Injunction or, in the Alternative, to Require Placement of Collected Funds in Escrow filed.
- 12/27/84 Affidavit of Janis Dennis in support of Plaintiff's Motion (of the same date) filed.
- 1/15/85 Supplemental Memorandum of Law in Support of Motion by Plaintiff for Preliminary Injunction or, in the Alternative, to Require Placement of Collected Funds in Escrow filed.
- 1/15/85 Demurrer and Motion of Defendants for Change of Venue filed.
- 1/21/85 Motion of Defendants for Change of Venue sustained; case transferred to District Court for Lancaster County, Nebraska.

**IN THE DISTRICT COURT OF DOUGLAS COUNTY**  
**STATE OF NEBRASKA**

\_\_\_\_\_  
**Doc. \_\_\_\_ No. \_\_\_\_**

**PETITION**  
**(EQUITY)**  
 \_\_\_\_\_

PRIVATE TRUCK COUNCIL OF AMERICA, INC.,

and

DENNIS TRUCKING,

On Behalf of Themselves and All Others  
 Similarly Situated,

*Plaintiffs,*

v.

STATE OF NEBRASKA,

and

HOLLY JENSEN, Individually and as Director, Nebraska  
 Department of Motor Vehicles,

and

LOU LAMBERTY, Individually and as Director, Nebraska  
 Department of Roads,

and

KAY ORR, Individually and as Nebraska State Treasurer,  
*Defendants,*

\_\_\_\_\_  
 1. This is an action for a declaratory judgment pursuant to Neb. Rev. Stat. §25-21,149 *et seq.* to declare retaliatory taxes imposed by Neb. Rev. Stat. §§60-305.02 and 60-305.03 unconstitutional, and to enjoin the defendants from

enforcing and collecting the tax, and to obtain refunds of all taxes unlawfully exacted.

### PARTIES

2. Plaintiff Private Truck Council of America, Inc. (PTCA), is a nonprofit business association incorporated under the laws of New York State. It has its principal place of business in Washington, D.C. PTCA is comprised of over 1,800 companies presently operating trucks and related equipment as private carriers within the scope and in furtherance of their own manufacturing, processing or other businesses, and associated companies. A large number of PTCA's member companies, operating thousands of vehicles in interstate commerce through the State of Nebraska, register their vehicles in states against which Nebraska retaliates under the authority contained in Sections 60-305.02 and 60-305.03. As such, these companies have been or will be required to pay the reciprocity fees imposed by the defendants.

3. Plaintiff Dennis Trucking is an unincorporated motor carrier with its principal place of business in Ohio. It is an owner of a nonresident vehicle for purposes of the taxes and fees imposed under Sections 60-305.02 and 60-305.03, which vehicle is duly authorized to operate in the State of Nebraska.

4. The defendants are the State of Nebraska and various individual State officials responsible for the implementation, collection, and administration of the retaliatory taxes and fees at issue in this case. Defendant Holly Jensen is the Director of Motor Vehicles. The Department of Motor Vehicles is the State agency which has authority, pursuant to Neb. Rev. Stat. §§60-305.02 and 60-305.03, to implement the retaliatory taxes and fees authorized in those sections. The Department of Motor Vehicles is also the State agency which assesses and enforces those retaliatory taxes and fees.

5. Defendant Lou Lamberty is the Director of the Department of Roads. The Department of Roads is the State agency which has authority, pursuant to Neb. Rev. Stat. §60-305.03(1), to act as agent for the Department of Motor Vehicles in collecting the retaliatory taxes and fees being challenged in this case.

6. Defendant Kay Orr is the State Treasurer of Nebraska. The State Treasurer is directed, pursuant to Neb. Rev. Stat. §60-305.03, to place the proceeds of the retaliatory taxes and fees at issue in this case in the Highway Cash Fund.

### THE CLASS

7. Pursuant to Neb. Rev. Stat. §25-319, plaintiffs bring this action on behalf of themselves and all other vehicle owners which have operated or will operate vehicles through the State of Nebraska which are registered in states against which Nebraska retaliates pursuant to Sections 60-305.02 and 60-305.03, and which have therefore paid or will be required to pay the retaliatory taxes and fees imposed under those sections. The parties comprising the plaintiff class include hundreds of interstate motor carriers and thus are so numerous as to make joinder of all impracticable. In addition, the claims of law and fact are common to all members of the class.

### JURISDICTION

8. This Court has jurisdiction over this action under Article V, §9 of the Nebraska Constitution and Neb. Rev. Stat. §24-302.

### FACTS

9. The State of Nebraska requires Nebraska resident motor carriers who own trucks and related equipment to register that equipment with the State and pay an annual

registration fee therefor. Non-resident motor carriers from 30 states pay a pro-rated annual registration fee to Nebraska through the International Registration Plan (IRP). Under the IRP, a carrier pays a registration fee solely to its base state, which fee is then divided between the other member states in which it operates. Nonresident motor carriers from all non-IRP states pay pro-rated annual registration fees to Nebraska under various reciprocity agreements, or are permitted to operate in Nebraska without payment of an annual fee pursuant to a reciprocity agreement. Thus, carriers from all states, including Nebraska, must in some manner fulfill Nebraska's registration requirements.

10. Nebraska also imposes a fuel tax on the consumption of motor fuel within the State. This tax is based on the percentage of a carrier's mileage in Nebraska and the amount of fuel consumed within the State. The fuel tax is paid by all motor carriers, including Nebraska-based carriers, regardless of their state of registration.

11. In addition to registration fees and fuel taxes described in paragraphs 9 and 10, Nebraska imposes a "retaliatory" tax solely on owner of motor vehicles registered in other states as follows:

Trucks, truck-tractors, semitrailers, trailers, or buses, from states other than Nebraska, entering Nebraska shall be required to comply with all the laws and regulations of any nature imposed on Nebraska trucks, truck-tractors, semitrailers, trailers, or buses, and to comply with all the requirements as to payment of all license fees, permit fees, and fees of whatever character which owners of trucks, truck-tractors, semitrailers, trailers, or buses, owned and operated in Nebraska, are required to pay when operating in such foreign state, unless the state or states, in which such trucks, truck-tractors, semitrailers,

trailers, or buses are domiciled, grant reciprocity comparable to that extended by the laws of Nebraska.

Neb. Rev. Stat. §60-305.02.

12. The statute further provides:

In case a foreign state or territory is not reciprocal as to license fees on commercial trucks, truck-tractors, semitrailers, trailers, or buses, the owners of such nonresident vehicles from those states or territories will be required to pay the same license fees as are charged residents of this state in such foreign state or territory. In case no fees are charged in Nebraska on trucks, truck-tractors, semitrailers, trailers, or buses, other than license fees, and the reciprocity law of any other foreign state or territory does not act to exempt Nebraska trucks, truck-tractors, semitrailers, trailers, or buses operating in that state from payment of all fees whatsoever, the owners of such foreign trucks, truck-tractors, semitrailers, trailers, or buses shall be required to pay a fee in an amount equal to the fee of whatever character, other than license fee, is charged by such other state to foreign trucks, truck-tractors, semitrailers, trailers, or buses; . . .

Neb. Rev. Stat. §60-305.03.

13. Sections 60-305.02 and 60-305.03 authorize the Nebraska Department of Motor Vehicles to monitor the taxes and fees imposed on Nebraska carriers by other states and to implement retaliatory taxes and fees against carriers whose vehicles are registered in other states as it sees fit. The Department of Roads is authorized to collect the taxes and fees. The statutes further provide that the proceeds of the retaliatory taxes and fees collected under Sections 60-305.02 and 60-305.03 shall be remitted to the State



Treasurer, who shall in turn place the money in the Highway Cash Fund.

14. The Nebraska Department of Motor Vehicles has implemented Sections 60-305.02 and 60-305.03 by imposing retaliatory taxes and fees on motor carriers whose vehicles are registered in any one or more of nine states. Thus, motor carriers whose vehicles are registered in Arkansas, Pennsylvania, Arizona, Oregon, Idaho, Nevada, Wyoming, Ohio, and New York must, in addition to registration fees and fuel taxes, pay retaliatory taxes and fees to the Department of Roads. The 1984 Reciprocity Manual of the Department of Motor Vehicles and various memoranda of the Department setting forth the amounts of these fees are attached hereto as Exhibit A.

15. Motor carriers whose vehicles are registered in Nebraska pay no fees or taxes pursuant to Sections 60-305.02 and 60-305.03 for their use of the State's roads.

16. Plaintiff Dennis Trucking ("Dennis") owns one vehicle, which is registered in the State of Ohio. On November 17, 1984 Dennis paid the State of Nebraska a retaliatory tax of two cents per mile, or \$9.00, pursuant to Sections 60-305.02 and 60-305.03. See Exhibit B hereto. On November 2, 1983, Dennis paid a retaliatory tax of two cents per mile, or \$9.00. See Exhibit C. Dennis continues to operate in Nebraska, and therefore will continue to be subject to the retaliatory taxes imposed pursuant to Sections 60-305.02 and 60-305.03.

#### COUNT I

##### Unlawful Burden On Interstate Commerce

17. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 16 as if fully set forth herein.

18. The retaliatory taxes and fees imposed on plaintiffs and the plaintiff class pursuant to Sections 60-305.02 and

60-305.03 constitute an unlawful burden on interstate commerce in violation of the Commerce Clause of Article I, Section 8, Clause 3 of the United States Constitution because they are imposed only on motor carriers whose vehicles are registered outside the State of Nebraska, while no comparable tax or fee is imposed on carriers whose vehicles are registered in the State of Nebraska. As such, the State by its taxing scheme favors domestic enterprises over enterprises from other states. Nebraska's retaliatory taxes and fees further impose an unlawful burden on interstate commerce because they vary in amount depending on the particular state of registration. On their face, therefore, the taxes and fees discriminate against interstate commerce. Moreover, the amount of the taxes and fees does not bear a reasonable relationship to the services provided by the State in connection therewith.

#### COUNT II

##### Denial of Privileges and Immunities

19. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 16 as if fully set forth herein.

20. The retaliatory taxes and fees imposed pursuant to Sections 60-305.02 and 60-305.03 constitute a denial of the privileges and immunities of plaintiffs and the plaintiff class, whose vehicles are registered outside the State of Nebraska, because they are imposed based on the taxpayers' residence in another state. No comparable tax is imposed on residents of Nebraska. Accordingly, these taxes discriminate against nonresidents in violation of the Privileges and Immunities Clause of Article IV, Section 2, Clause 1 of the United States Constitution.

**COUNT III****Nebraska Constitution**

21. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 16 as if fully set forth herein.

22. The retaliatory taxes and fees imposed pursuant to Sections 60-305.02 and 60-305.03 constitute a grant by the legislature of special and exclusive privileges, immunities, and franchises to corporations, associations, and individuals operating motor vehicles registered in Nebraska. They therefore violate Article III, Section 18 of the Constitution of the State of Nebraska.

**COUNT IV****42 U.S.C. §1983**

23. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 16 as if fully set forth herein.

24. The actions of defendants set forth in Counts I and II above have been and will continue to be taken under color of state law, custom and usage and threaten to deprive plaintiffs of rights secured to them by the United States Constitution. Defendants are therefore liable to plaintiffs pursuant to 42 U.S.C. §1983.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiffs pray that this Court grant them:

(a) A declaratory judgment pursuant to Neb. Rev. Stat. §25-21,149 declaring that the retaliatory taxes and fees authorized by Neb. Rev. Stat. §§60-305.02 and 60-305.03 violate the United States Constitution, the Nebraska Constitution, and federal law, and are therefore null and void;

(b) A permanent injunction enjoining the defendants from assessing or collecting retaliatory taxes and fees on nonresident motor carriers under Neb. Rev. Stat. §§60-305.02 and 60-305.03;

(c) Refunds of all retaliatory taxes and fees collected by the defendants pursuant to Neb. Rev. Stat. §§60-305.02 and 60-305.03 prior to the effectiveness of this Court's judgment, with interest;

(d) Attorneys' fees and costs of this action; and

(e) Such other and further relief as this Court may deem just.

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**EXHIBIT A****1984 RECIPROCITY MANUAL****INTERSTATE REGISTRATION SECTION****DEPARTMENT OF MOTOR VEHICLES**

Nebraska is currently a member of the following apportioned registration agreements:

**INTERNATIONAL REGISTRATION PLAN**

Alabama	Iowa	Mississippi	Oregon	Utah
Alberta	Illinois	Missouri	Oklahoma	Virginia
Arizona	Kansas	Montana	Pennsylvania	Wisconsin
Arkansas	Kentucky	Nebraska	South Dakota	Wyoming
Colorado	Louisiana	North Dakota	Tennessee	
Idaho	Minnesota	North Carolina	Texas	

**UNIFORM PRORATE AND RECIPROCITY AGREEMENT**

Alaska	California	New Mexico
British Columbia	Nevada	Washington

Any carrier engaged in operating a fleet of one or more apportionable vehicles in the State of Nebraska may, in lieu of full county registration, license such a fleet under the apportioned registration laws of the State of Nebraska.

An apportionable vehicle shall mean any vehicle except recreational vehicles, vehicles displaying restricted plates, city pick up and delivery vehicles, buses used in transportation of chartered parties, and government owned vehicles, used in two or more jurisdictions that allocate or proportionally register vehicles and is used for the transportation of persons, for hire, or designed, used or maintained primarily for the transportation of property and:

1. is a power unit having a gross weight in excess of 26,000 pounds,

2. is a power unit having three or more axles (on the ground), regardless of weight, or
3. is used in combinations when weight of such combination exceeds 26,000 pounds gross vehicle weight.

COLUMN #	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII
	Jurisdiction with full-license reciprocity for interstate movement.	Trip Permit cost for non-apportioned power vehicle with 2 axes & grossing 26,000 lbs. or less.	Trip Permit cost for non-apportioned vehicle or combination of vehicles with a gross weight of more than 26,000 lbs. or any power unit with 3 or more axes.	Maximum weight allowed in Nebraska	Tolerance	License fees based upon	Non-passenger commercial/apportioned vehicles expiration date.	Enforcement date	Passenger vehicle expiration date	Passenger vehicle enforcement date	Passenger vehicle reciprocity	Farm plated vehicle reciprocity
Alabama			\$10	80000	none	CGW	9/30	11/16	9/30	11/16	no <sup>1</sup>	yes
Alaska			\$10	95000	none	unladen	12/31	6/1	monthly	none	no	yes
Arizona		4	\$10ST \$20CU <sup>2</sup>	80000	none	CGW	12/31	3/1	monthly	none	no	no
Arkansas			\$25 <sup>1</sup>	80000 <sup>2</sup>	1000	CGW	6/30	8/1	monthly	none	no	no
California			\$45	80000	none	unladen	12/31	3/1	monthly	none	yes	no
Colorado		\$10 <sup>1</sup>	\$25	80000	none	unladen	12/31	3/1	12/31	3/1	no	no
Connecticut	X			80000	2% lic. wt.	CGW	4/30	5/1	monthly	none	no	yes

Delaware	X				80000	none	CGW	Stag	Stag			no	yes
Dt of Columbia	X				79000	none	CGW	3/31	4/1	3/31	4/1	no	yes
Florida	X				80000	none	CGW	Stag	Stag	Stag	none	no	yes
Georgia	X				80000	none	CGW	12/31	4/2	12/31	4/2	no	yes
Hawaii	X				80800	none	net load	12/31	4/1	12/31	4/1	no	no
Idaho				\$5 + .03 /mile	80000	none	CGW	12/31	3/1	monthly	none	no	no
Illinois				\$10	80000	none	CGW	12/31	3/1	12/31	1	no	no
Indiana	X				80000	none	CGW	2/28	3/1	monthly	none	no	yes
Iowa				\$10	80000	•	CGW	12/31	3/15	12/31	3/16	no	no
Kansas				\$20	80000	none	CGW	12/31	3/1	1	2	yes	no
Kentucky				\$25	80000	none	CGW	3/31	4/1	monthly	none	no	no
Louisiana				\$25	80000	5% lic. wt.	CGW	3/31	4/1	monthly	none	no	yes
Maine	X				80000	••	CGW	12/31	3/1	monthly	none	no	yes
Maryland	X				80000	none	CGW	4/30	5/1	3/31	4/1	no	yes
Massachusetts					80000	none	CGW	12/31	1/1	monthly	none	no	yes

• 5% on non-agricultural, 25% on agricultural  
•• 10% less than 15,000; 5% greater than 15,000

COLUMN #	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII
	Jurisdiction with full-license reciprocity for interstate movement.	Trip Permit cost for non-apportioned power vehicle with 2 axles & grossing 26,000 lbs. or less.	Trip Permit cost for non-apportioned vehicle or combination of vehicles with a gross weight of more than 26,000 lbs. or any power unit with 3 or more axles.	Maximum weight allowed in Nebraska	Tolerance	License fees based upon	Non-passenger commercial/apportioned vehicles expiration date.	Enforcement date	Passenger vehicle expiration date	Passenger vehicle enforcement date	Passenger vehicle reciprocity	Farm plated vehicle reciprocity
Michigan	X			80000	none	CGW	2/28	3/1	3/31	4/1	no	yes
Minnesota			\$10	80000	none	CGW	12/31	3/2	monthly	none	no	no
Mississippi	ADD MS as Recip. See X4-13 on Farm Plated Vehicles		\$10	80000	none <sup>1</sup>	CGW	10/31	11/1	monthly	<sup>3</sup>	no	yes
Missouri			\$10	80000	none	CGW	12/31	3/1	monthly	none	no	yes
Montana			\$10 ST \$15 CU	80000	none	CGW	12/31	2/16	monthly	none	no	yes
Nevada			\$10 + mileage \$.02 ST \$.04 CU	80000	none	unladen	12/31	2/1	monthly	none	no	no

New Hampshire	X			80000	5% lic. wt.	CGW	3/31	4/1	monthly	none	no	yes
New Jersey	X			80000	none	CGW	3/31	4/1	monthly	none	no	yes
New Mexico			\$15 ST \$25 CU	86400	none	CGW	12/31	3/3	12/31	3/3	no	no
New York	X <sub>1</sub>	\$5 ST 10 CU + mile <sub>2</sub>	\$5 ST \$10 CU + mile <sub>3</sub>	80000	none	CGW	Stag	Stag	monthly	none	no <sup>1</sup>	no
North Carolina			\$15	80000	5%	CGW	12/31	2/16	12/31	2/16	yes	no
North Dakota			\$20	80000	none	CGW	12/31	2/2	3/31	5/1	no	yes
Ohio	X <sub>1</sub>	\$1.01 ST \$.02 CU <sub>3</sub>	\$1.01 ST \$.02 CU <sub>4</sub>	80000	none	CGW	12/31	3/2	monthly	none	no <sup>1</sup>	no
Oklahoma			\$12	80000	none	CGW	12/31	3/2	monthly	none	no	yes
Oregon			\$10 + mile <sup>5</sup>	80000	none	gross wt	12/31	3/15	monthly	none	no	yes
Pennsylvania			\$15 <sup>6</sup>	80000	•	CGW	5/31	6/1	3/31	4/1	no	yes
Rhode Island	X			80000	none	CGW	3/31	4/1	3/31	4/1	no	yes

• 3% on state highways; none on interstate system



	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII
	Jurisdiction with full-license reciprocity for interstate movement.	Trip Permit cost for non-apportioned power vehicle with 2 axes & grossing 26,000 lbs. or less.	Trip Permit cost for non-apportioned vehicle or combination of vehicles with a gross weight of more than 26,000 lbs. or any power unit with 3 or more axes.	Maximum weight allowed in Nebraska	Tolerance	License fees based upon	Non-passenger commercial/apportioned vehicles expiration date.	Enforcement date	Passenger vehicle expiration date	Passenger vehicle enforcement date	Passenger vehicle reciprocity	Farm plated vehicle reciprocity
COLUMN #												
South Carolina	X			80000	none	net load	11/15	12/1	monthly	none	yes	yes
South Dakota			\$15 ST \$25 CU	80000	5%	CGW	12/31	4/1	3/31	4/1	no	no
Tennessee			\$20	80000	none	CGW	3/31	4/15	monthly	none	no	no
Texas			\$25	80000	none	CGW	3/31	4/1	monthly	none	yes	yes
Utah			\$10 ST \$15 CU	80000	none	CGW	12/31	3/1	monthly	none	no	no
Vermont	X			80000	none	CGW	4/40	5/1	2/28	3/1	no	yes

Virginia			\$15	80000	5% lic. wt.	CGW	2/28	4/1	monthly	none	no	yes
Washington			\$15 ST \$25 CU	80000	none	CGW	12/31	3/1	monthly	none	no	yes
West Virginia	X			80000	5% lic. wt.	CGW	6/30	7/1	monthly	none	no	yes
Wisconsin			\$10	80000	none	CGW	12/31	3/1	monthly	none	no	no
Wyoming			\$10 + mileage .015 ST .030 CU	80000	none	unladen	12/31	3/1	12/31	3/1	yes	no
Alberta			\$10	80000	10000	CGW	3/31	5/1	3/31	4/30	no	yes
British Columbia			\$10	80000	none	CGW	2/28	3/1	2/28	3/1	no	no
Manitoba	X			80000	none	CGW	2/28	3/1	2/28	3/1	no	yes
New Brunswick		\$10	\$10	80000	none	CGW	12/31	4/1	12/31	4/1	no	no
Newfoundland		\$10	\$10	73280	none	CGW	3/31	5/1	3/31	4/1	no	no
Nova Scotia	X			80000	none	CGW	2/28	3/1	12/31	4/1	no	yes
Ontario	X			80000	none	CGW	12/31	4/1	12/31	2/28	no	yes
Prince Ed Isld		\$10	\$10	74000	none	CGW	3/31	4/1	3/31	*	no	no

COLUMN #	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII
	Jurisdiction with full-license reciprocity for interstate movement.	Trip Permit cost for non-apportioned power vehicle with 2 axles & grossing 26,000 lbs. or less.	Trip Permit cost for non-apportioned vehicle or combination of vehicles with a gross weight of more than 26,000 lbs. or any power unit with 3 or more axles.	Maximum weight allowed in Nebraska	Tolerance	License fees based upon	Non-passenger commercial/apportioned vehicles expiration date.	Enforcement date	Passenger vehicle expiration date	Passenger vehicle enforcement date	Passenger vehicle reciprocity	Farm plated vehicle reciprocity
Quebec		\$10	\$10	80000	none	CGW	2/28	3/1	2/28	3/1	no	no
Saskatchewan		\$10 + .05/mile	\$10 + mileage	74000	none	CGW	4/30	5/1	4/30	5/1	no	no
Mexico	X											

## CHART EXPLANATIONS

## COLUMN I.

Vehicles properly registered in these jurisdictions shall be granted full license reciprocity on interstate operations provided the vehicle is properly registered. Properly registered shall mean a vehicle licensed or registered in one of the following:

- The jurisdiction where the person registering the vehicle has his/her legal residence, or
- The jurisdiction in which a commercial vehicle is registered, where the operation in which such vehicle is used has a principal place of business therein, and from or in which the vehicle is most frequently dispatched, garaged, serviced, maintained, operated or otherwise controlled, and the vehicle is assigned to such principal place of business, or
- The jurisdiction where, because of an agreement or arrangement between two or more jurisdictions, or pursuant to a declaration, the person registering the commercial vehicle has licensed the vehicle as required by said jurisdiction.

Any vehicle not properly registered as defined above shall be subject to purchasing a Trip Permit based upon the jurisdiction determined as the "principal place of business".

## EXCEPTIONS:

1. Vehicles properly registered in *New York* and *Ohio* shall be required to purchase a Trip Permit and/or Mileage Permit. *New York* household goods carriers are exempt from Trip Permit and Mileage Permit fees up to 71,000 pounds.
2. *Mexico* - Vehicles properly registered in Mexico and used for private use will be given full license reciprocity



on interstate movement. However, if the vehicle is being used commercially, the owner will be required to purchase a Nebraska Non-Resident Commercial Registration from the County Treasurer.

### COLUMN II.

The Trip Permit fees are indicated for each jurisdiction and the permit is valid for 72 hours or for a single trip into the state. *The Trip Permit does not allow intrastate movement.* For purposes of the chart:

CU = Combinations of tractor semitrailers

ST = Straight trucks pulling any type of trailer

1. *Colorado* - Any non-apportioned power unit or combination of vehicles grossing 10,000 pounds or more but not exceeding 26,000 pounds will be required to purchase a Trip Permit for \$10.
2. *New York* - Straight Trucks..... \$ 5.00  
     Tractor Trailer Combination..... \$10.00  
     Plus: 18,001-28,000 ..... \$.010 per mile  
           28,001-38,000 ..... .015 per mile  
           38,001-48,000 ..... .020 per mile  
           48,001-58,000 ..... .025 per mile  
           58,001-68,000 ..... .030 per mile  
           68,001-78,000 ..... .035 per mile
3. *Ohio* - Straight Trucks..... \$.01 per mile  
     Tractor Trailer Combination ..... \$.02 per mile
4. *Arizona* - A non-apportioned Arizona vehicle having a combined gross weight of 12,000-26,000 pounds will be required to purchase an Arizona Motor Carrier Trip Permit at the following rates for each trip:  
     \$12 - Up to 50 miles  
     \$48 - More than 50 miles

### COLUMN III.

The Trip Permit fees are indicated for each jurisdiction and the permit is valid for 72 hours or for a single trip into the state. *The Trip Permit does not allow intrastate movement.* For purposes of the chart:

CU = Combinations of tractor semitrailers

ST = Straight trucks pulling any type of trailer

1. *Arkansas* - Maximum weight of Arkansas based vehicles allowed in Nebraska is 73,280 pounds without a Reciprocity Permit. These permits allow the vehicle to carry 80,000 pounds at an annual fee of \$175 per vehicle and applies to both apportioned and non-apportioned vehicles. In lieu of the Reciprocity Permit, a mileage fee of \$.05 per mile travelled in Nebraska may be purchased.
2. *Arizona* - A non-apportioned Arizona vehicle having a combined gross weight of more than 26,000 pounds will be required to purchase a Trip Permit *plus* an Arizona Motor Carrier Trip Permit at the following rates for each trip:  
     \$12 - Up to 50 miles  
     \$48 - More than 50 miles  
     *New York* - Straight Trucks..... \$ 5.00  
         Tractor Trailer Combination..... \$10.00  
     Plus: 18,001-28,000..... \$.010 per mile  
           28,001-38,000..... .015 per mile  
           38,001-48,000..... .020 per mile  
           48,001-58,000..... .025 per mile  
           58,001-68,000..... .030 per mile  
           68,001-80,000..... .035 per mile
4. *Ohio* - Straight Trucks..... \$.01 per mile  
     Tractor Trailer Combination ..... \$.02 per mile

5. *Oregon* - 26,001-38,000 ..... \$.03 per mile  
               38,001-52,000 ..... \$.04 per mile  
               52,001-80,000 ..... \$.05 per mile
6. *Pennsylvania* - Apportioned and non-apportioned vehicles based in Pennsylvania grossing in excess of 26,000 are required to pay a Reciprocity Permit fee of \$36 per axle for travel into and thru Nebraska. In lieu of the Reciprocity Permit, a fee of \$15 will be assessed for each trip into Nebraska. Non-apportioned vehicles will be required to purchase a \$15 Trip Permit in addition to the Reciprocity Permit.
7. *Saskatchewan* - 26,001-50,000 ..... \$.10 per mile  
                       50,001-74,000 ..... \$.15 per mile

## COLUMN IV.

1. *Alberta* - Metric Conversion for 1 Kilogram = 2.2046 pounds.
2. *Arkansas* - Maximum weight of Arkansas based vehicles allowed in Nebraska is 73,280 without a Reciprocity Permit. These permits allow the vehicle to carry 80,000 pounds at an annual fee of \$175 per vehicle and applies to both apportioned and non-apportioned vehicles.

## COLUMN V.

1. *Mississippi* - No tolerance (except 2,000 pounds tolerance on liquified compressed gas).

## COLUMN IX.

1. *Kansas* - December 31 is the passenger vehicle expiration date except for staggered registrations which expire the last day of expiration month.

## COLUMN X.

1. *Illinois* - Changes each year but not beyond March 1.
2. *Kansas* - Staggered registrations with no extensions.  
    Others - February 16 with March 1 enforcement date.

3. *Mississippi* - Enforcement date of the 16th of the month following the month of expiration.
4. *Prince Edward Island* - Discretion of the Minister with a maximum of 30 days.

## COLUMN XI.

1. *Alabama, New York, and Ohio* - These residents attending an accredited school in Nebraska will not be required to obtain a Nebraska plate and registration while in attendance at that institution.

DEPARTMENT OF MOTOR VEHICLES  
STATE OF NEBRASKA  
LINCOLN 68509  
(402) 471-2281  
MEMORANDUM

TO: All Carrier Enforcement Officers  
FROM: Interstate Registration Section  
DATE: October 27, 1982  
SUBJECT: Arizona Motor Carrier Permit

Effective November 1, 1982, Nebraska will begin charging Arizona based vehicles a Motor Carrier Permit comparable to the permit fee being charged to Nebraska based vehicles operating in Arizona.

The permit fee is to be charged on all vehicles having a combined gross weight of more than 12,000 pounds, including apportioned carriers.

An apportioned vehicle having a combined gross weight of 12,000 pounds or more will be required to purchase an Arizona Motor Carrier Permit only. A non-apportioned vehicle having a combined gross weight of 12,000 to 26,000 pounds will be required to purchase an Arizona Motor Carrier Permit only. A non-apportioned vehicle having a combined gross weight of more than 26,000 pounds will be required to purchase a Prorate Trip Permit *plus* an Arizona Motor Carrier Permit.

MOTOR CARRIER PERMIT FEES:

\$12 for up to 50 miles operated on Nebraska Highways  
\$48 for more than 50 miles operated on Nebraska Highways

Effective January 1, 1983, carriers not obtaining the Motor Carrier Permit should be cited for violation of Nebraska Statute 60-305.02.

If you have any questions, please feel free to call me at 402-471-3891.

ARKANSAS

TRUCKS AND BUSES

*An Arkansas licensed vehicle (prorated or non-prorated) licensed or grossing in excess of 73,280 pounds not displaying reciprocity decal from Nebraska on side of vehicle must purchase a 5¢ a mile trip permit. This is in addition to the 72 hour \$25.00 prorate permit if vehicle is not prorated with Nebraska.*

A vehicle regardless of State of license, leased to an operator from Arkansas, that has a vehicle or combination of vehicles, that grosses in excess of 26,000 pounds empty or loaded, or any power unit with three (3) axles or more regardless of weight, if not prorated with Nebraska, must purchase a 72 hour \$25.00 prorate permit.

FARM PLATES

*Note: Farm plated truck tractors shall be treated the same as commercial licensed vehicles for trip permit purpose.*

SEE ATTACHMENTS



## PENNSYLVANIA

## TRUCKS AND BUSES

A *Pennsylvania licensed vehicle* (prorated or non-prorated) licensed or grossing in excess of 26,000 pounds not displaying reciprocity decal from Nebraska on side of vehicle must purchase a \$15.00 trip permit. *This is in addition to a \$15.00 72 hour prorate permit if vehicle is not prorated with Nebraska.*

A vehicle regardless of State of license, leased to an operator from Pennsylvania that has a vehicle having three (3) axles or more on the power unit or grossing in excess of 26,000 pounds, empty or loaded, must prorate with Nebraska or purchase a 72 hour \$15.00 prorate permit.

## NOTE - FARM PLATE

Farm plated Pennsylvania trucks and farm plated truck-tractor combinations do not need prorate or reciprocity permits of any kind.

SEE ATTACHMENT

## NEBRASKA RECIPROCITY QUALIFICATIONS

YEAR 19\_\_

## PENNSYLVANIA Complete Sections A &amp; B

Nebraska requires the payment of a \$36 per axle fee on Pennsylvania plated vehicles having a combined gross weight or registered combined gross weight in excess of 26,000 pounds, used on Nebraska highways and which are required to be registered for operation in Nebraska.

Carriers using truck tractors and combinations need to anticipate the number of axles that will be used in combination during the year. For the purpose of this fee, the front wheels on any vehicle are considered to be an axle.

## ARKANSAS Complete Sections A &amp; C

Nebraska requires the payment of an annual \$175 fee on Arkansas plated vehicles having a combined gross weight or registered combined gross weight in excess of 73,280 pounds used on Nebraska highways.

## SECTION A

Name	INP Account #		
Address	City	State	Zip Code

## SECTION B

Indicate number of stickers required in each category.

Number of Vehicles	Number of Axles By Category	Amount Due By Category	STATE OFFICE USE ONLY
2 axles	x 2	= \$36 = \$	2 axles
3 axles	x 3	= \$36 = \$	3 axles
4 axles	x 4	= \$36 = \$	4 axles
5 axles	x 5	= \$36 = \$	5 axles
6 axles	x 6	= \$36 = \$	6 axles
Total Axles		Total Due	Date
			Check MC Cash
			Check MC

## SECTION C

Number of Stickers x \$175 = \$ Total Fees Due

ALL CHECKS NEED TO BE CERTIFIED. Return to  
Department of Motor Vehicles  
Interstate Registration Section  
P. O. Box 94785  
Lincoln, NE 68509

DMV-23-11  
11-83

STATE OFFICE USE ONLY	
Sticker #	
Date	
Check MC Cash	
Check MC	

only one sticker per vehicle  
2 2 can be used for  
proportion

## EXHIBIT B

Nebraska Trip Permits for 1983 &amp; 1984

**PRORATION, MILEAGE AND FUEL PERMIT**

Date issued: 11-17-1983 119803

Permit is granted to make one trip into or across the State of Nebraska. Permit is void if vehicle leaves the State. PERMIT IS VALID FOR 72 HOURS ONLY.

From: Washington, D.C. To: Lincoln, Neb.

Vehicle: 1983 Chevy Blazer License: 1A568

Driver: W. H. H. H.

Total Miles: 450

PRORATION, RECUP or Mileage Fee: \$ 9.00

Fuel Permit Fee: \$ 0.00

TOTAL FEES COLLECTED: \$ 9.00

PRORATE - MILEAGE REQUIRING PER (1000) PER: \$ 9.00

FUEL REQUIRING PER (1000) TOTAL: \$ 9.00

DESIGNATE THE STATE THAT FEE IS CHARGED FROM: Nebraska

OVER 25,000 POUNDS: NO (YES IN 25,000 POUNDS)

Signature: W. H. H. H.

Stamp: 11-17-1983

OR Form 248, Apr 83

## EXHIBIT C

**PRORATION, MILEAGE AND FUEL PERMIT**

Date issued: 11-2-1983 1183

Permit is granted to make one trip into or across the State of Nebraska. Permit is void if vehicle leaves the State. PERMIT IS VALID FOR 72 HOURS ONLY.

From: Lincoln, Neb. To: Lincoln, Neb.

Vehicle: 1983 Chevy Blazer License: 1A568

Driver: W. H. H. H.

Total Miles: 450

PRORATION, RECUP or Mileage Fee: \$ 9.00

Fuel Permit Fee: \$ 0.00

TOTAL FEES COLLECTED: \$ 9.00

PRORATE - MILEAGE REQUIRING PER (1000) PER: \$ 9.00

FUEL REQUIRING PER (1000) TOTAL: \$ 9.00

DESIGNATE THE STATE THAT FEE IS CHARGED FROM: Nebraska

OVER 25,000 POUNDS: NO (YES IN 25,000 POUNDS)

Signature: W. H. H. H.

Stamp: 11-2-1983

OR Form 248, Apr 83



IN THE DISTRICT COURT OF DOUGLAS COUNTY  
STATE OF NEBRASKA

PRIVATE TRUCK COUNCIL OF AMERICA, INC., *et al.*

On Behalf of Themselves and All Others Similarly Situated,  
*Plaintiffs,*

v.

STATE OF NEBRASKA, *et al.*,  
*Defendants.*

MOTION FOR PRELIMINARY INJUNCTION OR IN THE  
ALTERNATIVE TO REQUIRE PLACEMENT OF TAX  
COLLECTIONS IN ESCROW

Plaintiffs hereby move this Court, pursuant to Neb. Rev. Stat. § 25-1063, for a preliminary injunction prohibiting the defendants from assessing or collecting taxes and fees on motor carriers pursuant to Neb. Rev. Stat. §§ 60-305.02 and 60-305.03, the validity of which is challenged in this action. In the alternative, plaintiffs move for an order prohibiting the defendants from disbursing the proceeds of taxes and fees collected pursuant to those sections and instead ordering the defendants to place said funds in an interest-bearing escrow account pending the resolution of this case.

As discussed more fully in the accompanying memorandum of points and authorities, this motion should be granted because plaintiffs are likely to succeed in the merits of their complaint; they will suffer irreparable injury if the Court does not grant this motion; and such injury outweighs any harm granting the injunction would inflict on the defendants.

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OF COUNSEL:

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Respectfully submitted,

/s/ Richard A. Allen

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Attorneys for Plaintiffs

IN THE DISTRICT COURT OF DOUGLAS COUNTY  
STATE OF NEBRASKA

PRIVATE TRUCK COUNCIL OF AMERICA, INC., *et al.*

On Behalf of Themselves and All Others Similarly Situated,  
*Plaintiffs,*

v.

STATE OF NEBRASKA, *et al.*,  
*Defendants.*

MEMORANDUM OF LAW IN SUPPORT OF MOTION  
FOR PRELIMINARY INJUNCTION OR, IN THE  
ALTERNATIVE, TO REQUIRE PLACEMENT OF  
COLLECTED FUNDS IN ESCROW

Plaintiffs submit this memorandum in support of their accompanying motion for a preliminary injunction prohibiting the defendants, pending this litigation, from collecting or enforcing the retaliatory fees and taxes the constitutionality of which plaintiffs challenge in this case. This motion should be granted because, as shown below, plaintiffs' likelihood of success on the merits is clear. The challenged fees and taxes, which apply only to motor carriers based in certain other states and not to Nebraska-based carriers, violate fundamental constitutional principles recently confirmed by the United States Supreme Court and other courts in striking down similarly discriminatory fees and taxes on out-of-state businesses, including motor carriers. Furthermore, as shown in the accompanying affidavits, payment of these fees and taxes during the litigation will impose irreparable burdens and costs on the out-of-state motor carriers that must pay them in order to operate in Nebraska (in competition with Nebraska-based carriers that do not have to pay them), even if those payments are refunded at the conclusion of the litigation.

Alternatively, if the Court does not preliminarily enjoin collection of taxes and fees, it should at least order the defendants to place the funds collected henceforth in es-

crow, to be returned to the taxpayers with accrued interest if plaintiffs are ultimately successful. Such alternative preliminary relief would remove any uncertainty regarding the return of monies paid, which itself is a substantial deterrent to operations in Nebraska by plaintiffs and other out-of-state carriers. Courts in similar cases have provided this kind of relief in order to minimize interference with the enforcement of contested taxes while at the same time protecting and ensuring the court's ability to provide relief in the most efficient, economical and expeditious manner.

STATEMENT OF FACTS

The Complaint in this case, filed on December 17, 1984, seeks declaratory, injunctive, and other relief against Nebraska's retaliatory tax on motor carriers whose vehicles are registered in certain other states. These taxes are imposed pursuant to Neb. Rev. Stat. §§60-305.02 and 60-305.03. Section 60-305.02 reads as follows:

Trucks, truck-tractors, semitrailers, trailers, or buses, from states other than Nebraska, entering Nebraska shall be required to comply with all the laws and regulations of any nature imposed on Nebraska trucks, truck-tractors, semitrailers, trailers, or buses, and to comply with all the requirements as to payment of all license fees, permit fees, and fees of whatever character which owners of trucks, truck-tractors, semitrailers, trailers, or buses, owned and operated in Nebraska, are required to pay when operating in such foreign state, unless the state or states, in which such truck, truck-tractors, semitrailers, trailers, or buses are domiciled, grant reciprocity comparable to that extended by the laws of Nebraska.

Section 60-305.03 reads as follows:



In case a foreign state or territory is not reciprocal as to license fees on commercial trucks, truck-tractors, semitrailers, trailers, or buses, the owners of such nonresident vehicles from those state or territories will be required to pay the same license fees as are charged residents of this state in such foreign state or territory. In case no fees are charged in Nebraska on trucks, truck-tractors, semitrailers, trailers, or buses, other than license fees, and the reciprocity law of any other foreign state or territory does not act to exempt Nebraska trucks, truck-tractors, semitrailers, trailers, or buses shall be required to pay a fee in an amount equal to the fee of whatever character, other than license fee, is charged by such other state to foreign trucks, truck-tractors, semitrailers, trailers, or buses; . . .

These sections authorize the Nebraska Department of Motor Vehicles to monitor taxes and fees imposed by other states on Nebraska-registered vehicles and to implement retaliatory taxes and fees against motor carriers from other states which impose taxes and fees on Nebraska-based trucks.

The Department of Motor Vehicles has implemented Sections 60-305.02 and 60-305.03 by instituting retaliatory taxes and fees against carriers whose vehicles are registered in nine states.<sup>1</sup> Six of these are mileage-based taxes, ranging from \$.01 per mile to \$.04 per mile, which must be paid quarterly. The other three are flat annual fees from \$12 to \$175. See Attachment A.

The important feature of Nebraska's retaliatory taxes and fees for purposes of this case is that they are not imposed on vehicles registered in Nebraska.

<sup>1</sup> These states are: Arkansas, Arizona, Pennsylvania, New York, Ohio, Idaho, Nevada, Oregon and Wyoming.

Payments of the retaliatory tax are presently being made by many carriers, and will continue to be made periodically while this litigation is pending. The annual fees must be paid on or before January 1 by carriers from states against which Nebraska retaliates. The mileage-based fees must be paid after each quarter. Any carrier which has not paid the retaliatory fees is forbidden to use Nebraska roads. Neb. Rev. Stat. §60-305.03.

The retaliatory taxes and fees imposed under Sections 60-305.02 and 60-305.03 are collected by the Department of Roads, acting as agent for the Department of Motor Vehicles. Unless this motion is granted, the proceeds of the retaliatory taxes and fees collected by the Department shall be turned over to the State Treasurer for deposit in the Highway Cash Fund, where they will be expended for the repair and maintenance of the roads. Neb. Rev. Stat. §60-305.03(1).

### ARGUMENT

#### I. THIS COURT SHOULD ISSUE A PRELIMINARY INJUNCTION AGAINST COLLECTION AND ENFORCEMENT OF THE CHALLENGED FEES AND TAXES

In determining whether to grant a preliminary injunction, courts in this State, as elsewhere, consider whether plaintiffs have shown at least a substantial possibility of success on the merits; whether plaintiffs will suffer irreparable injury if the preliminary injunction is not granted, and whether such injury outweighs any harm that granting the injunction would inflict on the defendants. See Neb. Rev. Stat. §25-1063. *Ct. Virginia Petroleum Jobbers, Inc. v. Federal Power Commission*, 259 F.2d 921, 925 (D.C. Cir. 1958). Consideration of those factors in this case fully warrants the preliminary relief requested by plaintiffs.

##### 1. Plaintiffs Are Likely To Succeed On The Merits.

The retaliatory fees and taxes challenged in this case constitute a blatant and egregious violation of the Com-

merce Clause and the Privileges and Immunities Clause (Article IV, Section 2) of the United States Constitution. With respect to the Commerce Clause, although it is settled that states may require persons engaged in interstate commerce to pay their fair share of state taxes, the United States Supreme Court has established four requirements that such taxes must satisfy to be upheld under the Commerce Clause. Thus in *Maryland v. Louisiana*, 451 U.S. 725, 754 (1981), the Court stated:

[No] state tax may be sustained unless the tax: (1) has a substantial nexus with the State; (2) is fairly apportioned; (3) does not discriminate against interstate commerce; and (4) is fairly related to the services provided by the State.

See also, *Complete Auto Transit v. Brady*, 430 U.S. 274 (1977); *American Trucking Associations, Inc. v. Quinn*, 437 A.2d 623 (Me. 1981).

Nebraska's retaliatory fees and taxes violate those principles in several respects. First, and most clearly, they discriminate on their face against interstate commerce. As described in the Statement, *supra*, they are imposed on motor carriers whose vehicles are registered in other states and operating in Nebraska, but not on carriers whose vehicles are registered in Nebraska. Accordingly, they contravene what the Supreme Court has described as "the fundamental principle that . . . [n]o State may, consistent with the Commerce Clause, 'impose a tax which discriminates against interstate commerce . . . by providing a direct commercial advantage to local business.'" *Boston Stock Exchange v. State Tax Commission*, 429 U.S. 318, 329 (1977), quoting from *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450, 457 (1959).<sup>2</sup>

<sup>2</sup> In *Boston Stock Exchange v. State Tax Commission*, *supra*, the Court struck down a New York transfer tax on sales of securities which imposed a heavier tax on the sale if it occurred on an out-of-state stock

Many cases have applied this principle to strike down discriminatory state taxes. In 1981, for example, the Supreme Court of Maine invalidated fees for certain highway use permits that were higher for vehicles registered in other states than for vehicles registered in Maine, and the Court rejected the State's argument that other fees and taxes imposed on locally-based carriers offset the discriminatory effect of the challenged fees. *American Trucking Associations, Inc. v. Quinn*, *supra*.

Similarly, this year the Supreme Court of Indiana struck down an Indiana ad valorem property tax imposed solely on carriers operating in interstate commerce, and rejected that state's arguments that other property taxes paid by intrastate carriers cured the discrimination. *Private Truck Council of America, Inc. v. Huie*, \_\_\_ Ind. \_\_\_, 466 N.E.2d 485 (Aug. 7, 1984). See also *Bacchus Imports, Ltd. v. Dias*, \_\_\_ U.S. \_\_\_, 104 S.Ct. 3049 (June 29, 1984), in which the United States Supreme Court invalidated an Hawaiian tax on the sale of liquor because it exempted sales of certain liquors produced in Hawaii, thereby favoring local businesses over out-of-state businesses.

The retaliatory fees and taxes challenged in this case are no less discriminatory and violative of the fundamental purposes of the Commerce Clause than the taxes and fees struck down in the *Boston Stock Exchange*, *Bacchus Imports*, *American Trucking Associations* and *Private Truck Council of America* cases cited above. Under Sections 60-305.02 and 60-305.03, carriers like the plaintiff Dennis Trucking, whose tractor is registered in Ohio, must pay

exchange than if it occurred on a New York exchange. The Court explained that the fundamental Commerce Clause prohibition against discriminatory treatment of interstate commerce "flows inexorably from the basic purpose of the Clause. Permitting the individual States to enact laws that favor local enterprises at the expense of out-of-state businesses 'would invite a multiplication of preferential trade areas destructive' of the free trade which the Clause protects." 429 U.S. at 329, quoting *Dean Milk Co. v. Madison*, 340 U.S. 349, 356 (1951).



a mileage fee of \$.02 per mile to Nebraska in order to operate in the State. In contrast, competing carriers registered in Nebraska pay nothing. Indeed, Dennis Trucking and others like them are doubly disadvantaged because they must pay both the retaliatory tax to Nebraska and the tax to Ohio against which Nebraska is retaliating, whereas their Nebraska-based competitors, unless they happen to operate in Ohio, pay neither tax.

Furthermore, Nebraska's retaliatory fees and taxes clearly cannot be justified under the Commerce Clause by the existence of the fees and taxes of Ohio and the other states against which Nebraska is retaliating. Those fees and taxes are imposed on all carriers operating in those states without regard to their state of registration, including carriers registered in the state imposing them. Those charges, through perhaps onerous and objectionable to Nebraska, are non-discriminatory. Thus, Nebraska's retaliatory taxes are not compensating for any unfair or discriminatory taxes that other states are imposing solely on carriers based in Nebraska. Instead, they are simply additional taxes which are themselves plainly discriminatory because they are imposed only on carriers based in other states.

Nebraska's retaliatory fees and taxes also violate the Commerce Clause because they are not fairly related to the services provided to the taxpayers by the State—the fourth prong of the test stated in *Maryland v. Louisiana*, *supra*, and *Complete Auto Transit v. Brady*, *supra*. The purpose of Nebraska's retaliatory levies is not to compensate Nebraska for services it provides to carriers from Ohio or other retaliated-against states. Their only purpose is to impose a burden on carriers from certain specific states, which the legislature of Nebraska hopes will induce the legislatures of those states to repeal fees and taxes

that Nebraska finds objectionable.<sup>3</sup> Nor is the amount of the fees and taxes based on or measured by any benefit Nebraska provides to carriers from those states; the amount is measured instead simply by the amount of fees and taxes that other states impose on motor carriers operating in those states.

Indeed, because of their retaliatory nature and purpose, the taxes and fees challenged in this case are precisely the kind of measures the Federal Constitution was adopted to eliminate and prevent. In *Travis v. Yale & Towne Manufacturing Co.*, 252 U.S. 60, 82 (1920) the Supreme Court noted this fundamental purpose of the Constitution when it invalidated a New York income tax that discriminated against nonresidents. The Court rejected New York's argument that the other states could respond with similar measures; the Court stated:

Nor can discrimination be corrected by retaliation; to prevent this was one of the chief ends sought to be accomplished by the adoption of the Constitution.

Nebraska's discriminatory retaliatory taxes and fees violate not only the Commerce Clause but also the Privileges and Immunities Clause of Article IV, Section 2 of the Constitution, which was designed to establish a "norm of comity" between states and to require each state to provide "substantial equality" of treatment to residents and non-residents. *Austin v. New Hampshire*, 420 U.S. 656 (1975).<sup>4</sup> Because they apply solely to carriers based in specified states and not to carriers based in Nebraska, the

<sup>3</sup> But see *Austin v. New Hampshire*, 420 U.S. 656, 666-667 (1975) and discussion at pp.10-11, *infra*.

<sup>4</sup> The purposes and protections of the Privileges and Immunities Clause and the Commerce Clause are similar and frequently overlapping. See *Hicklin v. Orbeck*, 437 U.S. 518, 531 (1978), referring to the "mutually reinforcing relationship between the Privileges and Immunities Clause of Article IV and the Commerce Clause. . . ."



challenged taxes and fees clearly deny the former substantial equality of treatment with the latter. Indeed, in *Austin v. New Hampshire*, *supra*, the Supreme Court invoked the Privileges and Immunities Clause to invalidate an analogous New Hampshire tax that discriminated against Maine residents. Significantly for present purposes, the Court rejected New Hampshire's argument that its taxing scheme enabled the Maine legislature to cancel the discriminatory effect of the New Hampshire tax. The Court stated (420 U.S. at 666-667; emphasis supplied):

[W]e do not think the possibility that Maine could shield its residents from New Hampshire's tax cures the constitutional defect of the discrimination in that tax. *In fact it compounds it. For New Hampshire in effect invites appellants to induce their representatives, if they can, to retaliate against it.*

Similarly, the ability of Ohio and other states to repeal their fees and taxes does not cure the constitutional defects of Nebraska's retaliatory fees and taxes.

By discriminating against motor carriers from certain states, Neb. Rev. Stat. §§ 60-305.02 and 60-305.03 also violate Article III, Section 18 of the Constitution of the State of Nebraska, because they amount to a grant by the Legislature of special privileges and immunities to corporations and individuals operating motor vehicles registered in Nebraska. The statute amounts to a wholly arbitrary division of a natural class of persons (motor carriers), and is therefore impermissible under this State's Constitution. *United States Cold Storage Corp. v. Stolinski*, 168 Neb. 513, 526, 96 N.W.2d 408 (1959).

In sum, plaintiffs have shown a high probability of success on the merits of their claim that Nebraska's retaliatory fees and taxes are plainly discriminatory and unconstitutional levies, and they have thus amply satisfied the requirement that applicants for preliminary injunctive

relief show at least a "substantial possibility" of success on the merits.

## **2. Plaintiffs Will Suffer Irreparable Injury If The Court Does Not Grant The Preliminary Relief Requested.**

In support of this motion plaintiffs have submitted the affidavit of Janis Dennis, who is in charge of vehicle registration and taxes for Dennis Trucking. Her affidavit shows that Dennis Trucking's operations are extremely sensitive to cost and that the retaliatory levy imposed by Nebraska on their Ohio-registered vehicle constitutes a substantial portion of the transportation cost of trips into Nebraska. In many cases the additional costs make prospective trips into Nebraska simply uneconomical or non-competitive with transportation offered by Nebraska-based carriers. The result is that the retaliatory taxes and fees preclude plaintiffs as an economic matter from making as many trips into Nebraska as they made prior to their imposition or as they would make in their absence. This in turn results in unrecoverable losses of revenue. The same is undoubtedly true of other carriers from Ohio and the eight other retaliated-against states on whose behalf this class action suit was filed.

The injury that payment of these fees and taxes imposes on Dennis Trucking and similarly situated carriers is irreparable even if plaintiffs were clearly entitled to refunds of them at the conclusion of the litigation in the event the court upholds plaintiffs' constitutional claims. That is so because depriving them of the funds during the pendency of the litigation constitutes a significant drain on their cash flow and, in the motor carrier business, whether or not an operation will generate positive cash flow is often determinative of whether it can be undertaken. The result, as Ms. Dennis states in her affidavit, is:

Whether or not we ultimately obtain a refund of Nebraska's retaliatory taxes at the end of the

case, having to pay the money currently, when our Nebraska competitors do not, will as practical matter prevent us from operating in Nebraska as frequently as we otherwise would.

Dennis affidavit, ¶7.

### 3. The Injury To Plaintiffs If The Preliminary Injunction Is Not Granted Outweighs The Injury To The State If It Is Granted.

If a preliminary injunction is granted and the defendants ultimately prevail on the merits, they will be entitled then to collect whatever taxes that would otherwise have been payable during the litigation. In terms of balancing the injuries, therefore, the question is whether plaintiffs or the State is injured more by being deprived of the money during the pendency of the litigation. In view of the greatly superior revenue raising resources of the State, plaintiffs submit that their injury clearly outweighs that of the defendants.

Plaintiffs recognize that a preliminary injunction may result in some enforcement difficulties if the State defendants ultimately prevail. That consideration, however, should be weighed against two other considerations. The first is the high probability, reflected in the earlier discussion, that plaintiffs will succeed on the merits. The second pertinent consideration is that the challenged taxes and fees significantly deter carriers based in the retaliated-against states from operating in Nebraska. See the affidavit of Ms. Dennis. This very real impediment of the flow of interstate commerce deprives the citizens of Nebraska of the economic benefits of that commerce and deprives the government of Nebraska of whatever tax revenues those benefits may generate. These ripple effects are obviously impossible to qualify, but it is not unreasonable to conclude that they outweigh the short-term revenues Nebraska might obtain from its retaliatory fees and taxes. Certainly it was the premise of the Commerce Clause that

each state would benefit more from the absence of obstacles to commerce than from their existence.<sup>5</sup>

### II. ALTERNATIVELY THE COURT SHOULD REQUIRE ALL FUNDS COLLECTED UNDER THE CHALLENGED FEES AND TAXES TO BE PLACED IN ESCROW

If the Court concludes that a preliminary injunction against collection would unduly interfere with the enforcement of Neb. Rev. Stat. §§60-305.02 and 60-305.03, it should at least grant plaintiffs' alternative request for preliminary relief by requiring the defendants to place the funds collected henceforth in escrow, which would be disbursed to the taxpayers with accrued interest less costs of the litigation and reasonable attorneys' fees when and if plaintiffs ultimately prevail on the merits.

This alternative form of relief is one that other courts have typically provided in similar circumstances. See Order of Justice Alexander, dated January 29, 1981 in *American Trucking Associations v. Brennan*, Superior Court of Cumberland, Maine, Docket No. CV 81-907<sup>6</sup> (Attachment B) and Order of Judge Boles, dated January 3, 1983, in *Private Trucking Council of America, Inc. v. Huie*, Hendricks County (Indiana) Circuit Court (Attachment C). Although not as protective of plaintiffs' interests as a preliminary injunction against collection of the taxes, an escrow order provides several significant benefits.

<sup>5</sup> A further consideration militating in favor of a preliminary injunction is that if plaintiffs are ultimately successful, as they are likely to be, an injunction will have saved the State the administrative costs involved in implementing and enforcing the statute and the costs of refunding the payments to perhaps thousands of carriers who paid the taxes and fees. Those costs are not insubstantial. In ordering refunds of the taxes found unconstitutional in *Private Truck Council of America, Inc. v. Huie*, *supra*, the court in that case found that the costs simply of cutting and mailing the 40,000 checks corresponding to tax payments over a two year period will be approximately \$30,000.

<sup>6</sup> This is the case that was later affirmed on the merits *sub nom. American Trucking Associations, Inc. v. Quinn*, *supra*.



First, although plaintiffs believe that they will be entitled as a matter of state law and the Federal Constitution to the return of all unconstitutionally exacted taxes and fees, they will not be certain of that entitlement until the case is concluded, and this lack of certainty itself creates an obstacle to plaintiffs' interstate operations in Nebraska that would be lessened by establishment of an escrow fund.

Moreover, an escrow fund would greatly facilitate refunds of at least the fees and taxes collected during the pendency of the case if the tax is ultimately held unconstitutional. An escrow will provide a ready fund from which refunds could easily be paid without having to go through administrative channels of the State.

Second, from the point of view of the State, requiring the funds to be set aside in escrow would not impede the collection of the taxes and fees and would thus threaten no loss of revenues. Nor would the State (or the plaintiffs) lose the time value of money if, as plaintiffs propose, the escrowed funds are required to be invested at commercially reasonable rates. Indeed, plaintiffs submit that granting the preliminary relief requested would serve the interests of the State as much as the plaintiffs. It will allow the State to plan and budget its expenditures and revenues more accurately and avoid the dislocations and strains inevitably created by a large unfunded liability.

As noted, these considerations have led two other courts recently to require contested tax collections to be placed in escrow, and they would support the same relief here.

#### CONCLUSION

The Court should issue a preliminary injunction against collection of the fees and taxes imposed under Neb. Rev. Stat. §§60-305.02 and 60-305.03, or alternatively issue an order requiring that the fees and taxes collected be placed in an escrow fund.

Respectfully submitted,

/s/ Richard A. Allen

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**ATTACHMENT A**  
**1984 RECIPROCITY MANUAL**  
**INTERSTATE REGISTRATION SECTION**  
**DEPARTMENT OF MOTOR VEHICLES**

Nebraska is currently a member of the following apportioned registration agreements:

**INTERNATIONAL REGISTRATION PLAN**

Alabama	Iowa	Mississippi	Oregon	Utah
Alberta	Illinois	Missouri	Oklahoma	Virginia
Arizona	Kansas	Montana	Pennsylvania	Wisconsin
Arkansas	Kentucky	Nebraska	South Dakota	Wyoming
Colorado	Louisiana	North Dakota	Tennessee	
Idaho	Minnesota	North Carolina	Texas	

**UNIFORM PRORATE AND RECIPROCITY AGREEMENT**

Alaska	California	New Mexico
British Columbia	Nevada	Washington

Any carrier engaged in operating a fleet of one or more apportionable vehicles in the State of Nebraska may, in lieu of full county registration, license such a fleet under the apportioned registration laws of the State of Nebraska.

An apportionable vehicle shall mean any vehicle except recreational vehicles, vehicles displaying restricted plates, city pick up and delivery vehicles, buses used in transportation of chartered parties, and government owned vehicles, used in two or more jurisdictions that allocate or proportionally register vehicles and is used for the transportation of persons, for hire, or designed, used or maintained primarily for the transportation of property and:

1. is a power unit having a gross weight in excess of 26,000 pounds,

2. is a power unit having three or more axles (on the ground), regardless of weight, or
3. is used in combinations when weight of such combination exceeds 26,000 pounds gross vehicle weight.

COLUMN #	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII
	Jurisdiction with full-license reciprocity for interstate movement.	Trip Permit cost for non-apportioned power vehicle with 2 axles & grossing 26,000 lbs. or less.	Trip Permit cost for non-apportioned vehicle or combination of vehicles with a gross weight of more than 26,000 lbs. or any power unit with 3 or more axles.	Maximum weight allowed in Nebraska	Tolerance	License fees based upon	Non-passenger commercial/apportioned vehicles expiration date.	Enforcement date	Passenger vehicle expiration date	Passenger vehicle enforcement date	Passenger vehicle reciprocity	Farm plated vehicle reciprocity
Alabama			\$10	80000	none	CGW	9/30	11/16	9/30	11/16	no <sup>1</sup>	yes
Alaska			\$10	95000	none	unladen	12/31	6/1	monthly	none	no	yes
Arizona		4	\$10ST \$20CU <sup>2</sup>	80000	none	CGW	12/31	3/1	monthly	none	no	no
Arkansas			\$25 <sup>1</sup>	80000 <sup>2</sup>	1000	CGW	6/30	8/1	monthly	none	no	no
California			\$45	80000	none	unladen	12/31	3/1	monthly	none	yes	no
Colorado		\$10 <sup>1</sup>	\$25	80000	none	unladen	12/31	3/1	12/31	3/1	no	no
Connecticut	X			80000	2% lic. wt.	CGW	4/30	5/1	monthly	none	no	yes

Delaware	X			80000	none	CGW	Stag	Stag			no	yes
Dt of Columbia	X			79000	none	CGW	3/31	4/1	3/31	4/1	no	yes
Florida	X			80000	none	CGW	Stag	Stag	Stag	none	no	yes
Georgia	X			80000	none	CGW	12/31	4/2	12/31	4/2	no	yes
Hawaii	X			80800	none	net load	12/31	4/1	12/31	4/1	no	no
Idaho			\$5 + .03 /mile	80000	none	CGW	12/31	3/1	monthly	none	no	no
Illinois			\$10	80000	none	CGW	12/31	3/1	12/31	<sup>1</sup>	no	no
Indiana	X			80000	none	CGW	2/28	3/1	monthly	none	no	yes
Iowa			\$10	80000	*	CGW	12/31	3/15	12/31	3/16	no	no
Kansas			\$20	80000	none	CGW	12/31	3/1	<sup>1</sup>	<sup>2</sup>	yes	no
Kentucky			\$25	80000	none	CGW	3/31	4/1	monthly	none	no	no
Louisiana			\$25	80000	5% lic. wt.	CGW	3/31	4/1	monthly	none	no	yes
Maine	X			80000	**	CGW	12/31	3/1	monthly	none	no	yes
Maryland	X			80000	none	CGW	4/30	5/1	3/31	4/1	no	yes
Massachusetts				80000	none	CGW	12/31	1/1	monthly	none	no	yes

\* 5% on non-agricultural, 25% on agricultural

\*\* 10% less than 15,000; 5% greater than 15,000

COLUMN #	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII
	Jurisdiction with full-license reciprocity for interstate movement.	Trip Permit cost for non-apportioned power vehicle with 2 axles & grossing 26,000 lbs. or less.	Trip Permit cost for non-apportioned vehicle or combination of vehicles with a gross weight of more than 26,000 lbs. or any power unit with 3 or more axles.	Maximum weight allowed in Nebraska	Tolerance	License fees based upon	Non-passenger commercial/apportioned vehicles expiration date.	Enforcement date	Passenger vehicle expiration date	Passenger vehicle enforcement date	Passenger vehicle reciprocity	Farm plated vehicle reciprocity
Michigan	X			80000	none	CGW	2/28	3/1	3/31	4/1	no	yes
Minnesota			\$10	80000	none	CGW	12/31	3/2	monthly	none	no	no
Mississippi	ADD MS as Recip. See X4-13 on Farm Plated Vehicles		\$10	80000	none <sup>1</sup>	CGW	10/31	11/1	monthly	<sup>3</sup>	no	yes
Missouri			\$10	80000	none	CGW	12/31	3/1	monthly	none	no	yes
Montana			\$10 ST \$15 CU	80000	none	CGW	12/31	2/16	monthly	none	no	yes
Nevada			\$10 + mileage \$.02 ST \$.04 CU	80000	none	unladen	12/31	2/1	monthly	none	no	no

New Hampshire	X			80000	5% lic. wt.	CGW	3/31	4/1	monthly	none	no	yes
New Jersey	X			80000	none	CGW	3/31	4/1	monthly	none	no	yes
New Mexico			\$15 ST \$25 CU	86400	none	CGW	12/31	3/3	12/31	3/3	no	no
New York	X <sub>1</sub>	\$5 ST 10 CU + mile <sub>2</sub>	\$5 ST \$10 CU + mile <sub>3</sub>	80000	none	CGW	Stag	Stag	monthly	none	no <sup>1</sup>	no
North Carolina			\$15	80000	5%	CGW	12/31	2/16	12/31	2/16	yes	no
North Dakota			\$20	80000	none	CGW	12/31	2/2	3/31	5/1	no	yes
Ohio	X <sub>1</sub>	\$.01 ST \$.02 CU <sub>3</sub>	\$.01 ST \$.02 CU <sub>4</sub>	80000	none	CGW	12/31	3/2	monthly	none	no <sup>1</sup>	no
Oklahoma			\$12	80000	none	CGW	12/31	3/2	monthly	none	no	yes
Oregon			\$10 + mile <sup>5</sup>	80000	none	gross wt	12/31	3/15	monthly	none	no	yes
Pennsylvania			\$15 <sup>6</sup>	80000	•	CGW	5/31	6/1	3/31	4/1	no	yes
Rhode Island	X			80000	none	CGW	3/31	4/1	3/31	4/1	no	yes

• 3% on state highways; none on interstate system



	Jurisdiction with full-license reciprocity for interstate movement.	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII
	Trip Permit cost for non-apportioned power vehicle with 2 axles & grossing 26,000 lbs. or less.												
	Trip Permit cost for non-apportioned vehicle or combination of vehicles with a gross weight of more than 26,000 lbs. or any power unit with 3 or more axles.												
	Maximum weight allowed in Nebraska												
	Tolerance												
	License fees based upon												
	Non-passenger commercial/apportioned vehicles expiration date.												
	Enforcement date												
	Passenger vehicle expiration date												
	Passenger vehicle enforcement date												
	Passenger vehicle reciprocity												
	Farm plated vehicle reciprocity												
COLUMN #													
South Carolina	X				80000	none	net load	11/15	12/1	monthly	none	yes	yes
South Dakota			\$15 ST \$25 CU	80000	5%	CGW	CGW	12/31	4/1	3/31	4/1	no	no
Tennessee			\$20	80000	none	CGW	CGW	3/31	4/15	monthly	none	no	no
Texas			\$25	80000	none	CGW	CGW	3/31	4/1	monthly	none	yes	yes
Utah	†		\$10 ST \$15 CU	80000	none	CGW	CGW	12/31	3/1	monthly	none	no	no
Vermont	X			80000	none	CGW	CGW	4/40	5/1	2/28	3/1	no	yes

				\$15	80000	5% lic.wt.	CGW	2/28	4/1	monthly	none	no	yes
Virginia													
Washington			\$15 ST \$25 CU	80000	none	CGW	12/31	3/1	3/1	monthly	none	no	yes
West Virginia	X			80000	5% lic.wt.	CGW	6/30	7/1	7/1	monthly	none	no	yes
Wisconsin			\$10	80000	none	CGW	12/31	3/1	3/1	monthly	none	no	no
Wyoming			\$10 + mileage .015 ST .030 CU	80000	none	unladen	12/31	3/1	3/1	12/31	3/1	yes	no
Alberta			\$10	80000 <sup>1</sup>	10000	CGW	3/31	5/1	5/1	3/31	4/30	no	yes
British Columbia			\$10	80000	none	CGW	2/28	3/1	3/1	2/28	3/1	no	no
Manitoba	X			80000	none	CGW	2/28	3/1	3/1	2/28	3/1	no	yes
New Brunswick		\$10	\$10	80000	none	CGW	12/31	4/1	4/1	12/31	4/1	no	no
Newfoundland		\$10	\$10	73280	none	CGW	3/31	5/1	5/1	3/31	4/1	no	no
Nova Scotia	X			80000	none	CGW	2/28	3/1	3/1	12/31	4/1	no	yes
Ontario	X			80000	none	CGW	12/31	4/1	4/1	12/31	2/28	no	yes
Prince Ed Isld		\$10	\$10	74000	none	CGW	3/31	4/1	4/1	3/31	*	no	no

[illegible]

**COLUMN I.**

Vehicles properly registered in these jurisdictions shall be granted full license reciprocity on interstate operations provided the vehicle is properly registered. Properly registered shall mean a vehicle licensed or registered in one of the following:

- The jurisdiction where the person registering the vehicle has his/her legal residence, or
- The jurisdiction in which a commercial vehicle is registered, where the operation in which such vehicle is used has a principal place of business therein, and from or in which the vehicle is most frequently dispatched, garaged, serviced, maintained, operated or otherwise controlled, and the vehicle is assigned to such principal place of business, or
- The jurisdiction where, because of an agreement or arrangement between two or more jurisdictions, or pursuant to a declaration, the person registering the commercial vehicle has licensed the vehicle as required by said jurisdiction.

Any vehicle not properly registered as defined above shall be subject to purchasing a Trip Permit based upon the jurisdiction determined as the "principal place of business".

**EXCEPTIONS:**

1. Vehicles properly registered in *New York* and *Ohio* shall be required to purchase a Trip Permit and/or Mileage Permit. *New York* household goods carriers are exempt from Trip Permit and Mileage Permit fees up to 71,000 pounds.
2. *Mexico* - Vehicles properly registered in Mexico and used for private use will be given full license reciprocity

on interstate movement. However, if the vehicle is being used commercially, the owner will be required to purchase a Nebraska Non-Resident Commercial Registration from the County Treasurer.

### COLUMN II.

The Trip Permit fees are indicated for each jurisdiction and the permit is valid for 72 hours or for a single trip into the state. *The Trip Permit does not allow intrastate movement.* For purposes of the chart:

CU = Combinations of tractor semitrailers

ST = Straight trucks pulling any type of trailer

1. *Colorado* - Any non-apportioned power unit or combination of vehicles grossing 10,000 pounds or more but not exceeding 26,000 pounds will be required to purchase a Trip Permit for \$10.
2. *New York* - Straight Trucks..... \$ 5.00  
     Tractor Trailer Combination..... \$10.00  
     Plus: 18,001-28,000 ..... \$.010 per mile  
           28,001-38,000 ..... .015 per mile  
           38,001-48,000 ..... .020 per mile  
           48,001-58,000 ..... .025 per mile  
           58,001-68,000 ..... .030 per mile  
           68,001-78,000 ..... .035 per mile
3. *Ohio* - Straight Trucks ..... \$.01 per mile  
     Tractor Trailer Combination ..... \$.02 per mile
4. *Arizona* - A non-apportioned Arizona vehicle having a combined gross weight of 12,000-26,000 pounds will be required to purchase an Arizona Motor Carrier Trip Permit at the following rates for each trip:

\$12 - Up to 50 miles

\$48 - More than 50 miles

### COLUMN III.

The Trip Permit fees are indicated for each jurisdiction and the permit is valid for 72 hours or for a single trip into the state. *The Trip Permit does not allow intrastate movement.* For purposes of the chart:

CU = Combinations of tractor semitrailers

ST = Straight trucks pulling any type of trailer

1. *Arkansas* - Maximum weight of Arkansas based vehicles allowed in Nebraska is 73,280 pounds without a Reciprocity Permit. These permits allow the vehicle to carry 80,000 pounds at an annual fee of \$175 per vehicle and applies to both apportioned and non-apportioned vehicles. In lieu of the Reciprocity Permit, a mileage fee of \$.05 per mile travelled in Nebraska may be purchased.
2. *Arizona* - A non-apportioned Arizona vehicle having a combined gross weight of more than 26,000 pounds will be required to purchase a Trip Permit *plus* an Arizona Motor Carrier Trip Permit at the following rates for each trip:  
     \$12 - Up to 50 miles  
     \$48 - More than 50 miles
- New York* - Straight Trucks ..... \$ 5.00  
     Tractor Trailer Combination..... \$10.00  
     Plus: 18,001-28,000..... \$.010 per mile  
           28,001-38,000..... .015 per mile  
           38,001-48,000..... .020 per mile  
           48,001-58,000..... .025 per mile  
           58,001-68,000..... .030 per mile  
           68,001-80,000..... .035 per mile
4. *Ohio* - Straight Trucks..... \$.01 per mile  
     Tractor Trailer Combination ..... \$.02 per mile



5. *Oregon* - 26,001-38,000 ..... \$.03 per mile  
               38,001-52,000 ..... \$.04 per mile  
               52,001-80,000 ..... \$.05 per mile
6. *Pennsylvania* - Apportioned and non-apportioned vehicles based in Pennsylvania grossing in excess of 26,000 are required to pay a Reciprocity Permit fee of \$36 per axle for travel into and thru Nebraska. In lieu of the Reciprocity Permit, a fee of \$15 will be assessed for each trip into Nebraska. Non-apportioned vehicles will be required to purchase a \$15 Trip Permit in addition to the Reciprocity Permit.
7. *Saskatchewan* - 26,001-50,000 ..... \$.10 per mile  
                       50,001-74,000 ..... \$.15 per mile

## COLUMN IV.

1. *Alberta* - Metric Conversion for 1 Kilogram = 2.2046 pounds.
2. *Arkansas* - Maximum weight of Arkansas based vehicles allowed in Nebraska is 73,280 without a Reciprocity Permit. These permits allow the vehicle to carry 80,000 pounds at an annual fee of \$175 per vehicle and applies to both apportioned and non-apportioned vehicles.

## COLUMN V.

1. *Mississippi* - No tolerance (except 2,000 pounds tolerance on liquified compressed gas).

## COLUMN IX.

1. *Kansas* - December 31 is the passenger vehicle expiration date *except* for staggered registrations which expire the last day of expiration month.

## COLUMN X.

1. *Illinois* - Changes each year but not beyond March 1.
2. *Kansas* - Staggered registrations with no extensions.  
    Others - February 16 with March 1 enforcement date.

3. *Mississippi* - Enforcement date of the 16th of the month following the month of expiration.
4. *Prince Edward Island* - Discretion of the Minister with a maximum of 30 days.

## COLUMN XI.

1. *Alabama, New York, and Ohio* - These residents attending an accredited school in Nebraska will *not* be required to obtain a Nebraska plate and registration while in attendance at that institution.

DEPARTMENT OF MOTOR VEHICLES  
STATE OF NEBRASKA  
LINCOLN 68509  
(402) 471-2281  
MEMORANDUM

TO: All Carrier Enforcement Officers  
FROM: Interstate Registration Section  
DATE: October 27, 1982  
SUBJECT: Arizona Motor Carrier Permit

Effective November 1, 1982, Nebraska will begin charging Arizona based vehicles a Motor Carrier Permit comparable to the permit fee being charged to Nebraska based vehicles operating in Arizona.

The permit fee is to be charged on all vehicles having a combined gross weight of more than 12,000 pounds, including apportioned carriers.

An apportioned vehicle having a combined gross weight of 12,000 pounds or more will be required to purchase an Arizona Motor Carrier Permit only. A non-apportioned vehicle having a combined gross weight of 12,000 to 26,000 pounds will be required to purchase an Arizona Motor Carrier Permit only. A non-apportioned vehicle having a combined gross weight of more than 26,000 pounds will be required to purchase a Prorate Trip Permit *plus* an Arizona Motor Carrier Permit.

**MOTOR CARRIER PERMIT FEES:**

\$12 for up to 50 miles operated on Nebraska Highways  
\$48 for more than 50 miles operated on Nebraska Highways

Effective January 1, 1983, carriers not obtaining the Motor Carrier Permit should be cited for violation of Nebraska Statute 60-305.02.

If you have any questions, please feel free to call me at 402-471-3891.

**ARKANSAS**

**TRUCKS AND BUSES**

*An Arkansas licensed vehicle (prorated or non-prorated) licensed or grossing in excess of 73,280 pounds not displaying reciprocity decal from Nebraska on side of vehicle must purchase a 5¢ a mile trip permit. This is in addition to the 72 hour \$25.00 prorate permit if vehicle is not prorated with Nebraska.*

A vehicle regardless of State of license, leased to an operator from Arkansas, that has a vehicle or combination of vehicles, that grosses in excess of 26,000 pounds empty or loaded, or any power unit with three (3) axles or more regardless of weight, if not prorated with Nebraska, must purchase a 72 hour \$25.00 prorate permit.

**FARM PLATES**

*Note: Farm plated truck tractors shall be treated the same as commercial licensed vehicles for trip permit purpose.*

**SEE ATTACHMENTS**

JA-66

## PENNSYLVANIA

## TRUCKS AND BUSES

A *Pennsylvania licensed vehicle* (prorated or non-prorated) licensed or grossing in excess of 26,000 pounds not displaying reciprocity decal from Nebraska on side of vehicle must purchase a \$15.00 trip permit. *This is in addition to a \$15.00 72 hour prorate permit if vehicle is not prorated with Nebraska.*

A vehicle regardless of State of license, leased to an operator from Pennsylvania that has a vehicle having three (3) axles or more on the power unit or grossing in excess of 26,000 pounds, empty or loaded, must prorate with Nebraska or purchase a 72 hour \$15.00 prorate permit.

## NOTE - FARM PLATE

Farm plated Pennsylvania trucks and farm plated truck-tractor combinations do not need prorate or reciprocity permits of any kind.

SEE ATTACHMENT

JA-67

## NEBRASKA RECIPROCITY QUALIFICATIONS

YEAR 19\_\_

## PENNSYLVANIA: Complete Sections A &amp; B

Nebraska requires the payment of a \$36 per axle fee on Pennsylvania plated vehicles having a combined gross weight or registered combined gross weight in excess of 26,000 pounds, used on Nebraska highways and which are required to be registered for operation in Nebraska.

Carriers using truck tractors and combinations need to anticipate the number of axles that will be used in combination during the year. For the purpose of this tax, the front wheels on any vehicle are considered to be on an axle.

## ARKANSAS: Complete Sections A &amp; C

Nebraska requires the payment of an annual \$175 fee on Arkansas plated vehicles having a combined gross weight or registered combined gross weight in excess of 73,280 pounds used on Nebraska highways.

## SECTION A

Name	TRF Account #		
Address	City	State	Zip Code

## SECTION B

Indicate number of stickers required in each category.

Number of Vehicles	Number of Axles By Category	Amount Due By Category	STATE OFFICE USE ONLY
2 axles _____	x 2 _____	x \$36 = \$ _____	2 axles _____
3 axles _____	x 3 _____	x \$36 = \$ _____	3 axles _____
4 axles _____	x 4 _____	x \$36 = \$ _____	4 axles _____
5 axles _____	x 5 _____	x \$36 = \$ _____	5 axles _____
6 axles _____	x 6 _____	x \$36 = \$ _____	6 axles _____
Total Axles _____		Total Due _____	Date _____ Check <input type="checkbox"/> MC <input type="checkbox"/> Cash _____ Check <input type="checkbox"/> TRF # _____

## SECTION C

Number of Stickers \_\_\_\_\_ x \$175 = \$ \_\_\_\_\_ Total Fees Due \_\_\_\_\_

ALL CHECKS NEED TO BE CERTIFIED. Return to  
Department of Motor Vehicles  
Interstate Registration Section  
P. O. Box 94785  
Lincoln, NE 68509

DMV-23-51  
11-83

STATE OFFICE USE ONLY	
Sticker #s _____	
Date _____	
Check <input type="checkbox"/> MC <input type="checkbox"/> Cash _____	
Check <input type="checkbox"/> TRF # _____	

2 2



## ATTACHMENT B

STATE OF MAINE  
CUMBERLAND,

ss.

SUPERIOR COURT  
CIVIL ACTION

Docket No. CV 81-907

AMERICAN TRUCKING ASSOCIATIONS, INC., *et al.*,  
Plaintiffs

v.

JOSEPH E. BRENNAN, *et al.*,  
Defendants

## ORDER

To implement the Opinion and Order of this Court dated July 29, 1981, the Court hereby orders as follows:

1. Pursuant to this Court's Opinion and Order of July 29, 1981, the parties shall establish an escrow fund (hereinafter "escrow fund") at the Canal Bank, located at One Central Plaza, Augusta, Maine.

2. All defendants, with the exception of defendant Joseph E. Brennan, and all agents or other persons acting under such defendants' direction, supervision, or control, are hereby ordered to deposit into the escrow fund established pursuant to this Order all monies collected or received pursuant to 29 M.R.S.A. §246-A from owners or operators of trucks which are not registered in the State of Maine. At all times such funds will be handled in a manner which allows them to be identified as escrow fund

monies and shall not become a part of the State Treasury for purposes of the doctrine of sovereign immunity. In collecting, receiving or otherwise dealing with such monies, all defendants, and all agents or other persons acting under such defendants' direction, supervision, or control, shall be deemed to be acting pursuant to this Order. The express purpose of this provision of the Order is to eliminate any bar to recovery of such monies by individual motor carriers which might otherwise arise from the doctrine of sovereign immunity.

3. Defendant Secretary of State shall prepare weekly reports which shall include total gross receipts received and deposited in the escrow fund established pursuant to this Order and send such reports to plaintiff American Trucking Associations, Inc. (c/o Douglas A. Hughes, Director, State Laws, Taxation and Reciprocity, 1616 P Street, N.W., Washington DC 20036) with copies to plaintiffs' counsel (John C. Lightbody, Esquire, Murray, Plumb & Murray, 30 Exchange Street, Portland, ME 04101). Such weekly reports shall identify those gross amounts which were received as Forty Dollar (\$40.00) annual permit fees and those gross amounts which were received as Twenty Dollar (\$20.00) "15-day trip permit" fees.

4. Defendant Secretary of State shall maintain adequate records which identify, by name, address, and dates and amounts of monies paid, all persons from whom monies are received or collected for deposit in the escrow fund. Such records shall be made available to plaintiffs upon reasonable notice.

5. The defendants shall have the Canal Bank prepare a report on the first working day of each week, which report shall include the following: (1) the total amount of all deposits made to the fund to date; (2) the amount of all deposits made to the fund in the preceding week; (3) a description, including dollar amounts, of all current investments; (4) a monthly running total of the income earned

to date. Such reports shall be submitted to this Court with copies to plaintiff American Trucking Associations, Inc. (c/o Douglas A. Hughes, Director, State Laws, Taxation and Reciprocity, 1616 P Street, N.W., Washington, DC 20036), plaintiffs' counsel, and defendants' counsel (William C. Nugent, Assistant Attorney General, State House, Augusta ME 04333).

6. The Canal Bank shall at all times maintain accurate records and invest deposited funds and accrued earned income at commercially reasonable rates in a commercially reasonable and prudent manner.

7. If an order is entered by this Court permanently enjoining the defendants from enforcing 29 M.R.S.A. §246-A against plaintiffs, defendant Secretary of State shall, unless said order is stayed, within thirty (30) days of the permanent injunction, provide Canal Bank with the records maintained pursuant to paragraph 4 above identifying, by name, address, and dates and amounts of monies paid, all persons from whom monies have been collected or received for deposit in the escrow fund. Within a reasonable time after receipt of those identification records, the Canal Bank shall reimburse persons entitled to such funds by mailing checks to the individual motor carriers.

8. The manner in which the income generated by the escrow fund is disposed of in the event plaintiffs prevail in this action is specifically reserved for the trial on the merits. In any event, Canal Bank shall be compensated out of accrued earned income for all reasonable and customary costs, fees, and charges in connection with establishing and administering the escrow fund, including if plaintiffs should prevail, costs incurred in disbursing monies to individual motor carriers.

9. Whether plaintiffs may recover from defendants their costs, including the charges of Canal Bank described in paragraph 8 above, and/or counsel fees incurred in this action is specifically reserved for trial on the merits.

SQ ORDERED.

Dated: July 31, 1981.

/s/  
Justice, Superior Court

A True Copy.

Attest: /s/ Margaret P. LaSassey  
Clerk of Courts

JUL 31 1981

## ATTACHMENT C

STATE OF INDIANA  
COUNTY OF HENDRICKS

SS:

IN THE HENDRICKS CIRCUIT COURT

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 CAUSE NO. CV 882-361
 

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PRIVATE TRUCK COUNCIL OF AMERICA, INC., *et al.*,  
Plaintiffs,

vs.

JOHN HUIE, *et al.*,  
Defendants.

## ORDER FOR ESCROW OF FUNDS

Come now the plaintiffs, by counsel, and file their "Motion for Preliminary Injunction Against Disbursement of Funds and for Establishment of Escrow" which reads as follows:

(H.I.)

And come now the defendants, by counsel, and file their "Defendants' Concurrence to Plaintiffs' Motion . . ." which reads as follows:

(H.I.)

And the Court being duly advised finds as follows:

1. That the collections from the indefinite-situs distributable property tax, levied by Acts 1981, P.L. 66, are due to be paid to the Indiana Department of State Revenue on December 31, 1982.

2. That pursuant to IC 6-1.1-8-35(d) a majority of the tax collections are to be distributed to the various counties.

3. That no procedure exists for taxpayers to seek refunds of erroneously collected taxes from the various counties.

4. That if any portion of the indefinite-situs distributable property tax is determined to have been collected erroneously then the Indiana Department of State Revenue would be the proper party in interest to refund the erroneous collections.

5. That placing the tax collections in controversy into escrow is in the best interest of all parties.

6. That pursuant to IC 6-1.1-8-35.1 necessary funds are to be appropriated from the tax collections to pay the administrative expenses of collecting and administering the tax.

7. That these expenses are necessary to facilitate the collection and administration of the tax.

8. That the Treasurer of the State of Indiana is the proper party to act as escrow agent for these tax collections.

It is, therefore, ORDERED that the Indiana Department of State Revenue transfer all collections from the assessment and collection of the indefinite-situs distributable property tax, Acts 1981, P. L. 66, to the Treasurer of the State of Indiana which are in excess of the appropriation for administrative expenses. The Treasurer, Honorable Julian L. Ridden, shall deposit the funds in an escrow account, segregated from the other funds of the State of Indiana. The funds placed in escrow shall be deposited in interest bearing accounts or invested in interest bearing securities, as permitted by law. All interest payments shall also be held in escrow.



These funds shall be held in escrow until further order of this Court.

Dated: \_\_\_\_\_  
 Judge, Hendricks Circuit  
 Court

Copies to:

Dan S. LaRue	Jacob P. Billig, Esq.
Deputy Attorney General	BILLIG, SHER & JONES, P.C.
219 State House	2033 K. Street, N.W.
Indianapolis, Indiana 46204	Washington, D.C. 20006
Attorney for Defendants	Melvin R. Daniel, Esq.
	DANN, PECAR, NEWMAN,
	TALESNICK & KLEIMAN
	1600 Market Square Center
	151 N. Delaware Street
	Indianapolis, Indiana 46204
	Attorneys for Plaintiffs

IN THE DISTRICT COURT OF DOUGLAS COUNTY  
 STATE OF NEBRASKA

Doc. 841 No. 154

PRIVATE TRUCK COUNCIL OF AMERICA, INC., *et al.*

On Behalf of Themselves and All Others Similarly Situated,  
*Plaintiffs,*

v.

STATE OF NEBRASKA, *et al.*,  
*Defendants.*

FILED  
 IN DISTRICT COURT  
 DOUGLAS COUNTY, NEBRASKA  
 DEC 27 1984  
 RUDY J. TESAR  
 CLERK DISTRICT COURT

AFFIDAVIT OF JANIS DENNIS  
 STATE OF OHIO  
 COUNTY OF LORAIN  
 SS

Janis Dennis, being duly sworn, deposes and states as follows:

1. My name is Janis Dennis. My address is 23821 Roy-alton Road, Columbia Station, Ohio 44028. I work with my husband, Mark Dennis, in our business as a motor carrier of goods in interstate commerce. In addition to driving our vehicles, I am responsible for the administrative aspects of the business, including registration, licensing, taxes and fees for our vehicle. I am submitting this

affidavit in support of Plaintiffs' Motion For Preliminary Injunction or in the Alternative To Require Placement Of Tax Collections in Escrow.

2. In 1978, my husband and I purchased a truck and we began our own trucking business, Dennis Trucking. We now operate one tractor and two trailers in several states, including the State of Nebraska. Our tractor is registered in Ohio, and is therefore subject to the retaliatory tax imposed by Nebraska. We have paid to Nebraska retaliatory taxes of \$9.00 on November 17, 1984; \$9.60 on December 9, 1983; \$9.00 on December 4, 1983; \$9.00 on November 2, 1983; \$7.00 on September 13, 1983; and \$9.00 on June 1, 1983.

3. As a result of Nebraska's retaliatory tax, we operate in Nebraska less often than we otherwise would. Nebraska's tax makes it particularly difficult to operate profitably in the State because it places us at a distinct disadvantage with respect to our Nebraska-based competitors. As a result of Nebraska's tax, we are subject to a double tax burden because our Ohio-based truck is subject both to Ohio's mileage tax, which is imposed on both resident and nonresident carriers, and to Nebraska's retaliatory tax. In contrast, Nebraska-registered vehicles which operate on the same routes as we do are not subject to the Nebraska tax. We have lost business in Nebraska because of the added cost of the retaliatory tax, which has made certain loads unprofitable which we otherwise could have taken.

4. The economic hardship of Nebraska's retaliatory tax is magnified on small carriers such as ourselves. In trying to build our business, we have incurred a substantial capital cost in purchasing a truck, a cost which is very difficult for a small-volume carrier like us to absorb. In addition, we incur substantial daily operating costs, including fuel, maintenance, and federal and state taxes and fees. The latter constitute a substantial portion of our operating costs.

5. Because of our high capital and operating costs, the line between profitable and unprofitable operations is often very closely drawn. The smallest added expense can often make the difference between the two. Thus, Nebraska's retaliatory tax has a significant financial impact on our business and we simply operate less often in the State because of the tax.

6. Another substantial burden of the retaliatory tax is the time, and therefore business opportunities, lost in paying the retaliatory tax and obtaining the permits. Permits must be purchased at one of three offices located along the main highways of the State. The process of stopping and parking the truck, giving the appropriate information and obtaining the permit, and getting back on the road generally takes from one half to one hour. However, not infrequently the office is particularly crowded or temporarily closed, and we have had to wait for several hours or even overnight to obtain a permit. This time, of course, would otherwise have been spent on the road carrying a load. In the trucking business, time is literally money, and thus the time spent obtaining Nebraska's retaliatory permit means lost profits for our business.

7. The immediate substantial costs and burdens of the retaliatory tax cannot be fully remedied by obtaining refunds at the end of the suit even if we succeed in having the tax declared unconstitutional. Our immediate problem is one of cash flow—if a load will not produce a present profit, we must in essence advance the extra costs of haulage, which deprives us of the use of that money for a substantial period of time. For a small carrier such as Dennis Trucking, that is not economically feasible. Thus, whether or not we ultimately obtain a refund of Nebraska's retaliatory taxes at the end of the case, having to pay the money currently, when our Nebraska competitors do not, will as a practical matter prevent us from operating in Nebraska as frequently as we otherwise would.

This, of course, results in substantial loss of revenue that can never be recovered.

/s/ Janis Dennis  
Janis Dennis

Subscribed and sworn to before me this 21st day of December, 1984.

/s/ Linda K. Kijek  
Notary Public

My Commission Expires:  
LINDA K. KIJEK  
Notary Public for the State of Ohio  
My Commission Expires on

IN THE DISTRICT COURT OF LANCASTER COUNTY  
STATE OF NEBRASKA

                      
Docket 390      Page 26  
                    

MARK E. DENNIS, doing business as Dennis Trucking,  
Individually and On Behalf of All Others Similarly Situated,  
*Plaintiff,*

v.

STATE OF NEBRASKA,

and

HOLLY JENSEN, Individually and as Director, Nebraska  
Department of Motor Vehicles,

and

LOU LAMBERTY, Individually and as Director, Nebraska  
Department of Roads,

and

KAY ORR, Individually and as Nebraska State Treasurer,  
*Defendants.*

**FIRST AMENDED PETITION**

1. This is an action for a declaratory judgment pursuant to Neb. Rev. Stat. §25-21,149 *et seq.* to declare retaliatory taxes imposed by Neb. Rev. Stat. §§60-305.02 and 60-305.03 unconstitutional, and to enjoin the defendants from enforcing and collecting the tax, and to obtain refunds of all taxes unlawfully exacted.

**PARTIES**

2. Plaintiff Mark E. Dennis owns and operates Dennis Trucking, a sole proprietorship with its principal place of



business in Ohio. He is an owner of a nonresident vehicle for purposes of the taxes and fees imposed under Sections 60-305.02 and 60-305.03, which vehicle is duly authorized to operate in the State of Nebraska.

3. The defendants are the State of Nebraska and various individual State officials responsible for the implementation, collection, and administration of the retaliatory taxes and fees at issue in this case. Defendant Holly Jensen is the Director of Motor Vehicles. The Department of Motor Vehicles is the State agency which has authority, pursuant to Neb. Rev. Stat. §§60-305.02 and 60-305.03, to implement the retaliatory taxes and fees authorized in those sections. The Department of Motor Vehicles is also the State agency which assesses and enforces those retaliatory taxes and fees.

4. Defendant Lou Lamberty is the Director of the Department of Roads. The Department of Roads is the State agency which has authority, pursuant to Neb. Rev. Stat. §60-305.03(1), to act as agent for the Department of Motor Vehicles in collecting the retaliatory taxes and fees being challenged in this case.

5. Defendant Kay Orr is the State Treasurer of Nebraska. The State Treasurer is directed, pursuant to Neb. Rev. Stat. §60-305.03, to place the proceeds of the retaliatory taxes and fees at issue in this case in the Highway Cash Fund.

#### THE CLASS

6. Pursuant to Neb. Rev. Stat. §25-319, plaintiff Mark E. Dennis brings this action on behalf of himself and all other vehicle owners which have operated or will operate through the State of Nebraska vehicles which are registered in states against which Nebraska retaliates pursuant to Sections 50-305.02 and 60-305.03, and which have therefore paid or will be required to pay the retaliatory taxes and fees imposed under those sections. The parties comprising

the plaintiff class include hundreds of interstate motor carriers and thus are so numerous as to make joinder of all impracticable. In addition, the claims of law and fact are common to all members of the class.

#### JURISDICTION

7. This Court has jurisdiction over this action under Article V, §9 of the Nebraska Constitution and Neb. Rev. Stat. §24-302.

#### FACTS

8. The State of Nebraska requires Nebraska resident motor carriers who own trucks and related equipment to register that equipment with the State and pay an annual registration fee therefor. Non-resident motor carriers from 30 states pay a pro-rated annual registration fee to Nebraska through the International Registration Plan (IRP). Under the IRP, a carrier pays a registration fee solely to its base state, which fee is then divided between the other member states in which it operates. Nonresident motor carriers from all non-IRP states pay pro-rated annual registration fees to Nebraska under various reciprocity agreements, or are permitted to operate in Nebraska without payment of an annual fee pursuant to a reciprocity agreement. Thus, carriers from all states, including Nebraska, must in some manner fulfill Nebraska's registration requirements.

9. Nebraska also imposes a fuel tax on the consumption of motor fuel within the State. This tax is based on the percentage of a carrier's mileage in Nebraska and the amount of fuel consumed within the State. The fuel tax is paid by all motor carriers, including Nebraska-based carriers, regardless of their state of registration.

10. In addition to registration fees and fuel taxes described in paragraphs 9 and 10, Nebraska imposes a "re-

taliatory" tax solely on owner of motor vehicles registered in other states as follows:

Trucks, truck-tractors, semitrailers, trailers, or buses, from states other than Nebraska, entering Nebraska shall be required to comply with all the laws and regulations of any nature imposed on Nebraska trucks, truck-tractors, semitrailers, trailers or buses, and to comply with all the requirements as to payment of all license fees, permit fees, and fees of whatever character which owners of trucks, truck-tractors, semitrailers, trailers, or buses, owned and operated in Nebraska, are required to pay when operating in such foreign state, unless the state or states, in which such trucks, truck-tractors, semitrailers, trailers, or buses are domiciled, grant reciprocity comparable to that extended by the laws of Nebraska.

Neb. Rev. Stat. §60-305.02.

11. The statute further provides:

In case a foreign state or territory is not reciprocal as to license fees on commercial trucks, truck-tractors, semitrailers, trailers, or buses, the owners of such nonresident vehicles from those states or territories will be required to pay the same license fees as are charged residents of this state in such foreign state or territory. In case no fees are charged in Nebraska on trucks, truck-tractors, semitrailers, trailers, or buses, other than license fees, and the reciprocity law of any other foreign state or territory does not act to exempt Nebraska trucks, truck-tractors, semitrailers, trailers, or buses operating in that state from payment of all fees whatsoever, the owners of such foreign trucks, truck-tractors, semitrail-

ers, trailers, or buses shall be required to pay a fee in an amount equal to the fee of whatever character, other than license fee, is charged by such other state to foreign trucks, truck-tractors, semitrailers, trailers, or buses; . . .

Neb. Rev. Stat. §60-305.03.

12. Sections 60-305.02 and 60-305.03 authorize the Nebraska Department of Motor Vehicles to monitor the taxes and fees imposed on Nebraska carriers by other states and to implement retaliatory taxes and fees against carriers whose vehicles are registered in other states as it sees fit. The Department of Roads is authorized to collect the taxes and fees. The statutes further provide that the proceeds of the retaliatory taxes and fees collected under Sections 60-305.02 and 60-305.03 shall be remitted to the State Treasurer, who shall in turn place the money in the Highway Cash Fund.

13. The Nebraska Department of Motor Vehicles has implemented Sections 60-305.02 and 60-305.03 by imposing retaliatory taxes and fees on motor carriers whose vehicles are registered in any one or more of nine states. Thus, motor carriers whose vehicles are registered in Arkansas, Pennsylvania, Arizona, Oregon, Idaho, Nevada, Wyoming, Ohio and New York must, in addition to registration fees and fuel taxes, pay retaliatory taxes and fees to the Department of Roads. The 1984 Reciprocity Manual of the Department of Motor Vehicles and various memoranda of the Department setting forth the amounts of these fees are attached hereto as Exhibit A.

14. Motor carriers whose vehicles are registered in Nebraska pay no fees or taxes pursuant to Sections 60-305.02 and 60-305.03 for their use of the State's roads.

15. Plaintiff Mark E. Dennis owns one vehicle, which is registered in the State of Ohio. On November 17, 1984 Dennis paid the State of Nebraska a retaliatory tax of



two cents per mile, or \$9.00, pursuant to Sections 60-305.02 and 60-305.03. See Exhibit B hereto. On November 2, 1983, Dennis paid a retaliatory tax of two cents per mile, or \$9.00. See Exhibit C. Dennis continues to operate in Nebraska, and therefore will continue to be subject to the retaliatory taxes imposed pursuant to Sections 60-305.02 and 60-305.03.

### COUNT I

#### Unlawful Burden On Interstate Commerce

16. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 15 as if fully set forth herein.

17. The retaliatory taxes and fees imposed on plaintiff and the plaintiff class pursuant to Sections 60-305.02 and 60-305.03 constitute an unlawful burden on interstate commerce in violation of the Commerce Clause of Article I, Section 8, Clause 3 of the United States Constitution because they are imposed only on motor carriers whose vehicles are registered outside the State of Nebraska, while no comparable tax or fee is imposed on carriers whose vehicles are registered in the State of Nebraska. As such, the State by its taxing scheme favors domestic enterprises over enterprises from other states. Nebraska's retaliatory taxes and fees further impose an unlawful burden on interstate commerce because they vary in amount depending on the particular state of registration. On their face, therefore, the taxes and fees discriminate against interstate commerce. Moreover, the amount of the taxes and fees does not bear a reasonable relationship to the services provided by the State in connection therewith.

### COUNT II

#### Denial of Privileges and Immunities

18. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 15 as if fully set forth herein.

19. The retaliatory taxes and fees imposed pursuant to Sections 60-305.02 and 60-305.03 constitute a denial of the privileges and immunities of plaintiff and the plaintiff class, whose vehicles are registered outside the State of Nebraska, because they are imposed based on the taxpayers' residence in another state. No comparable tax is imposed on residents of Nebraska. Accordingly, these taxes discriminate against nonresidents in violation of the Privileges and Immunities Clause of Article IV, Section 2, Clause 1 of the United States Constitution.

### COUNT III

#### Nebraska Constitution

20. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 15 as if fully set forth herein.

21. The retaliatory taxes and fees imposed pursuant to Sections 60-305.02 and 60-305.02 constitute a grant by the legislature of special and exclusive privileges, immunities, and franchises to corporations, associations, and individuals operating motor vehicles registered in Nebraska. They therefore violate Article III, Section 18 of the Constitution of the State of Nebraska.

### COUNT IV

#### 42 U.S.C. §1983

22. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 15 as if fully set forth herein.

23. The actions of defendants set forth in Courts I and II above have been and will continue to be taken under color of state law, custom and usage and threaten to deprive plaintiff of rights secured to him by the United States Constitution. Defendants are therefore liable to plaintiffs pursuant to 42 U.S.C. §1983.



**PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays that this Court grant him and to all members of the plaintiff class:

(a) A declaratory judgment pursuant to Neb. Rev. Stat. §25-21,149 declaring that the retaliatory taxes and fees authorized by Neb. Rev. Stat. §§60-305.02 and 60-305.03 violate the United States Constitution, the Nebraska Constitution, and federal law, and are therefore null and void;

(b) A permanent injunction enjoining the defendants from assessing or collecting retaliatory taxes and fees on non-resident motor carriers under Neb. Rev. Stat. §§60-305.02 and 60-305.03;

(c) Refunds of all retaliatory taxes and fees collected by the defendants pursuant to Neb. Rev. Stat. §§60-305.02 and 60-305.03 prior to the effectiveness of this Court's judgment, with interest;

(d) Attorneys' fees and costs of this action; and

(e) Such other and further relief as this Court may deem just.

**OF COUNSEL:**

BILLIG, SHER, & JONES, P.C.  
2033 K Street, N.W.  
Suite 300  
Washington, D.C. 20006

/s/ Richard A. Allen

JACOB P. BILLIG

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RICHARD L. SPANGLER, JR.

Woods, Aitken, Smith,  
Greer, Overcash  
& Spankler

1500 American Charter  
Center

206 South 13th Street  
Lincoln, Nebraska 68508

Attorneys for Plaintiff

**EXHIBIT A**

**1984 RECIPROCITY MANUAL  
INTERSTATE REGISTRATION SECTION  
DEPARTMENT OF MOTOR VEHICLES**

Nebraska is currently a member of the following apportioned registration agreements:

**INTERNATIONAL REGISTRATION PLAN**

Alabama	Iowa	Mississippi	Oregon	Utah
Alberta	Illinois	Missouri	Oklahoma	Virginia
Arizona	Kansas	Montana	Pennsylvania	Wisconsin
Arkansas	Kentucky	Nebraska	South Dakota	Wyoming
Colorado	Louisiana	North Dakota	Tennessee	
Idaho	Minnesota	North Carolina	Texas	

**UNIFORM PRORATE AND RECIPROCITY AGREEMENT**

Alaska	California	New Mexico
British Columbia	Nevada	Washington

Any carrier engaged in operating a fleet of one or more apportionable vehicles in the State of Nebraska may, in lieu of full county registration, license such a fleet under the apportioned registration laws of the State of Nebraska.

An apportionable vehicle shall mean any vehicle except recreational vehicles, vehicles displaying restricted plates, city pick up and delivery vehicles, buses used in transportation of chartered parties, and government owned vehicles, used in two or more jurisdictions that allocate or proportionally register vehicles and is used for the transportation of persons, for hire, or designed, used or maintained primarily for the transportation of property and:

1. is a power unit having a gross weight in excess of 26,000 pounds,

2. is a power unit having three or more axles (on the ground), regardless of weight, or
3. is used in combinations when weight of such combination exceeds 26,000 pounds gross vehicle weight.

	Jurisdiction with full-license reciprocity for interstate movement.	Trip Permit cost for non-apportioned power vehicle with 2 axles & grossing 26,000 lbs. or less.	Trip Permit cost for non-apportioned vehicle or combination of vehicles with a gross weight of more than 26,000 lbs. or any power unit with 3 or more axles.	Maximum weight allowed in Nebraska	Tolerance	License fees based upon	Non-passenger commercial/apportioned vehicles expiration date.	Enforcement date	Passenger vehicle expiration date	Passenger vehicle enforcement date	Passenger vehicle reciprocity	Farm plated vehicle reciprocity
COLUMN #	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII
Alabama			\$10	80000	none	CGW	9/30	11/16	9/30	11/16	no <sup>1</sup>	yes
Alaska			\$10	95000	none	unladen	12/31	6/1	monthly	none	no	yes
Arizona			\$10ST \$20CU <sup>2</sup>	80000	none	CGW	12/31	3/1	monthly	none	no	no
Arkansas			\$25 <sup>1</sup>	80000 <sup>2</sup>	1000	CGW	6/30	8/1	monthly	none	no	no
California			\$45	80000	none	unladen	12/31	3/1	monthly	none	yes	no
Colorado		\$10 <sup>1</sup>	\$25	80000	none	unladen	12/31	3/1	12/31	3/1	no	no
Connecticut	X			80000	2% lic. wt.	CGW	4/30	5/1	monthly	none	no	yes

Delaware	X			80000	none	CGW	Stag	Stag			no	yes
Dt of Columbia	X			79000	none	CGW	3/31	4/1	3/31	4/1	no	yes
Florida	X			80000	none	CGW	Stag	Stag	Stag	none	no	yes
Georgia	X			80000	none	CGW	12/31	4/2	12/31	4/2	no	yes
Hawaii	X			80800	none	net load	12/31	4/1	12/31	4/1	no	no
Idaho			\$5 + .03 /mile	80000	none	CGW	12/31	3/1	monthly	none	no	no
Illinois			\$10	80000	none	CGW	12/31	3/1	12/31	<sup>1</sup>	no	no
Indiana	X			80000	none	CGW	2/28	3/1	monthly	none	no	yes
Iowa			\$10	80000	*	CGW	12/31	3/15	12/31	3/16	no	no
Kansas			\$20	80000	none	CGW	12/31	3/1	<sup>1</sup>	<sup>2</sup>	yes	no
Kentucky			\$25	80000	none	CGW	3/31	4/1	monthly	none	no	no
Louisiana			\$25	80000	5% lic. wt.	CGW	3/31	4/1	monthly	none	no	yes
Maine	X			80000	**	CGW	12/31	3/1	monthly	none	no	yes
Maryland	X			80000	none	CGW	4/30	5/1	3/31	4/1	no	yes
Massachusetts				80000	none	CGW	12/31	1/1	monthly	none	no	yes

\* 5% on non-agricultural, 25% on agricultural  
 \*\* 10% less than 15,000; 5% greater than 15,000



COLUMN #	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII
	Jurisdiction with full-license reciprocity for interstate movement.	Trip Permit cost for non-apportioned power vehicle with 2 axles & grossing 26,000 lbs. or less.	Trip Permit cost for non-apportioned vehicle or combination of vehicles with a gross weight of more than 26,000 lbs. or any power unit with 3 or more axles.	Maximum weight allowed in Nebraska	Tolerance	License fees based upon	Non-passenger commercial/apportioned vehicles expiration date.	Enforcement date	Passenger vehicle expiration date	Passenger vehicle enforcement date	Passenger vehicle reciprocity	Farm plated vehicle reciprocity
Michigan	X			80000	none	CGW	2/28	3/1	3/31	4/1	no	yes
Minnesota			\$10	80000	none	CGW	12/31	3/2	monthly	none	no	no
Mississippi	ADD MS as Recip. See X4-13 on Farm Plated Vehicles		\$10	80000	none <sup>1</sup>	CGW	10/31	11/1	monthly	3	no	yes
Missouri			\$10	80000	none	CGW	12/31	3/1	monthly	none	no	yes
Montana			\$10 ST \$15 CU	80000	none	CGW	12/31	2/16	monthly	none	no	yes
Nevada			\$10 + mileage \$.02 ST \$.04 CU	80000	none	unladen	12/31	2/1	monthly	none	no	no

New Hampshire	X			80000	5% lic. wt.	CGW	3/31	4/1	monthly	none	no	yes
New Jersey	X			80000	none	CGW	3/31	4/1	monthly	none	no	yes
New Mexico			\$15 ST \$25 CU	86400	none	CGW	12/31	3/3	12/31	3/3	no	no
New York	X <sub>1</sub>	\$5 ST 10 CU + mile <sub>2</sub>	\$5 ST \$10 CU + mile <sub>3</sub>	80000	none	CGW	Stag	Stag	monthly	none	no <sup>1</sup>	no
North Carolina			\$15	80000	5%	CGW	12/31	2/16	12/31	2/16	yes	no
North Dakota			\$20	80000	none	CGW	12/31	2/2	3/31	5/1	no	yes
Ohio	X <sub>1</sub>	\$.01 ST \$.02 CU <sub>3</sub>	\$.01 ST \$.02 CU <sub>4</sub>	80000	none	CGW	12/31	3/2	monthly	none	no <sup>1</sup>	no
Oklahoma			\$12	80000	none	CGW	12/31	3/2	monthly	none	no	yes
Oregon			\$10 + mile <sup>5</sup>	80000	none	gross wt	12/31	3/15	monthly	none	no	yes
Pennsylvania			\$15 <sup>6</sup>	80000	•	CGW	5/31	6/1	3/31	4/1	no	yes
Rhode Island	X			80000	none	CGW	3/31	4/1	3/31	4/1	no	yes

• 3% on state highways; none on interstate system

COLUMN #	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII
	Jurisdiction with full-license reciprocity for interstate movement.	Trip Permit cost for non-apportioned power vehicle with 2 axles & grossing 26,000 lbs. or less.	Trip Permit cost for non-apportioned vehicle or combination of vehicles with a gross weight of more than 26,000 lbs. or any power unit with 3 or more axles.	Maximum weight allowed in Nebraska	Tolerance	License fees based upon	Non-passenger commercial/apportioned vehicles expiration date.	Enforcement date	Passenger vehicle expiration date	Passenger vehicle enforcement date	Passenger vehicle reciprocity	Farm plated vehicle reciprocity
South Carolina	X			80000	none	net load	11/15	12/1	monthly	none	yes	yes
South Dakota			\$15 ST \$25 CU	80000	5%	CGW	12/31	4/1	3/31	4/1	no	no
Tennessee			\$20	80000	none	CGW	3/31	4/15	monthly	none	no	no
Texas			\$25	80000	none	CGW	3/31	4/1	monthly	none	yes	yes
Utah			\$10 ST \$15 CU	80000	none	CGW	12/31	3/1	monthly	none	no	no
Vermont	X			80000	none	CGW	4/40	5/1	2/28	3/1	no	yes

Virginia			\$15	80000	5% lic. wt.	CGW	2/28	4/1	monthly	none	no	yes
Washington			\$15 ST \$25 CU	80000	none	CGW	12/31	3/1	monthly	none	no	yes
West Virginia	X			80000	5% lic. wt.	CGW	6/30	7/1	monthly	none	no	yes
Wisconsin			\$10	80000	none	CGW	12/31	3/1	monthly	none	no	no
Wyoming			\$10 + mileage .015 ST .030 CU	80000	none	unladen	12/31	3/1	12/31	3/1	yes	no
Alberta			\$10	80000	10000	CGW	3/31	5/1	3/31	4/30	no	yes
British Columbia			\$10	80000	none	CGW	2/28	3/1	2/28	3/1	no	no
Manitoba	X			80000	none	CGW	2/28	3/1	2/28	3/1	no	yes
New Brunswick		\$10	\$10	80000	none	CGW	12/31	4/1	12/31	4/1	no	no
Newfoundland		\$10	\$10	73280	none	CGW	3/31	5/1	3/31	4/1	no	no
Nova Scotia	X			80000	none	CGW	2/28	3/1	12/31	4/1	no	yes
Ontario	X			80000	none	CGW	12/31	4/1	12/31	2/28	no	yes
Prince Ed Isld		\$10	\$10	74000	none	CGW	3/31	4/1	3/31	*	no	no

COLUMN #	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII
	Jurisdiction with full license reciprocity for interstate movement.	Trip Permit cost for non-apportioned power vehicle with 2 axles & grossing 26,000 lbs. or less.	Trip Permit cost for non-apportioned vehicle or combination of vehicles with a gross weight of more than 26,000 lbs. or any power unit with 3 or more axles.	Maximum weight allowed in Nebraska	Tolerance	License fees based upon	Non-passenger commercial/apportioned vehicles expiration date.	Enforcement date	Passenger vehicle expiration date	Passenger vehicle enforcement date	Passenger vehicle reciprocity	Farm plated vehicle reciprocity
Quebec		\$10	\$10	80000	none	CGW	2/28	3/1	2/28	3/1	no	no
Saskatchewan		\$10 + .05/mile	\$10 + mileage	74000	none	CGW	4/30	5/1	4/30	5/1	no	no
Mexico	X											

## CHART EXPLANATIONS

## COLUMN I.

Vehicles properly registered in these jurisdictions shall be granted full license reciprocity on interstate operations provided the vehicle is properly registered. Properly registered shall mean a vehicle licensed or registered in one of the following:

- The jurisdiction where the person registering the vehicle has his/her legal residence, or
- The jurisdiction in which a commercial vehicle is registered, where the operation in which such vehicle is used has a principal place of business therein, and from or in which the vehicle is most frequently dispatched, garaged, serviced, maintained, operated or otherwise controlled, and the vehicle is assigned to such principal place of business, or
- The jurisdiction where, because of an agreement or arrangement between two or more jurisdictions, or pursuant to a declaration, the person registering the commercial vehicle has licensed the vehicle as required by said jurisdiction.

Any vehicle not properly registered as defined above shall be subject to purchasing a Trip Permit based upon the jurisdiction determined as the "principal place of business".

## EXCEPTIONS:

1. Vehicles properly registered in *New York* and *Ohio* shall be required to purchase a Trip Permit and/or Mileage Permit. *New York* household goods carriers are exempt from Trip Permit and Mileage Permit fees up to 71,000 pounds.
2. *Mexico* - Vehicles properly registered in *Mexico* and used for private use will be given full license reciprocity



on interstate movement. However, if the vehicle is being used commercially, the owner will be required to purchase a Nebraska Non-Resident Commercial Registration from the County Treasurer.

### COLUMN II.

The Trip Permit fees are indicated for each jurisdiction and the permit is valid for 72 hours or for a single trip into the state. *The Trip Permit does not allow intrastate movement.* For purposes of the chart:

CU = Combinations of tractor semitrailers

ST = Straight trucks pulling any type of trailer

1. *Colorado* - Any non-apportioned power unit or combination of vehicles grossing 10,000 pounds or more but not exceeding 26,000 pounds will be required to purchase a Trip Permit for \$10.
2. *New York* - Straight Trucks..... \$ 5.00  
           Tractor Trailer Combination..... \$10.00  
       Plus: 18,001-28,000 ..... \$.010 per mile  
             28,001-38,000 ..... .015 per mile  
             38,001-48,000 ..... .020 per mile  
             48,001-58,000 ..... .025 per mile  
             58,001-68,000 ..... .030 per mile  
             68,001-78,000 ..... .035 per mile
3. *Ohio* - Straight Trucks..... \$.01 per mile  
           Tractor Trailer Combination..... \$.02 per mile
4. *Arizona* - A non-apportioned Arizona vehicle having a combined gross weight of 12,000-26,000 pounds will be required to purchase an Arizona Motor Carrier Trip Permit at the following rates for each trip:

\$12 - Up to 50 miles

\$48 - More than 50 miles

### COLUMN III.

The Trip Permit fees are indicated for each jurisdiction and the permit is valid for 72 hours or for a single trip into the state. *The Trip Permit does not allow intrastate movement.* For purposes of the chart:

CU = Combinations of tractor semitrailers

ST = Straight trucks pulling any type of trailer

1. *Arkansas* - Maximum weight of Arkansas based vehicles allowed in Nebraska is 73,280 pounds without a Reciprocity Permit. These permits allow the vehicle to carry 80,000 pounds at an annual fee of \$175 per vehicle and applies to both apportioned and non-apportioned vehicles. In lieu of the Reciprocity Permit, a mileage fee of \$.05 per mile travelled in Nebraska may be purchased.
2. *Arizona* - A non-apportioned Arizona vehicle having a combined gross weight of more than 26,000 pounds will be required to purchase a Trip Permit *plus* an Arizona Motor Carrier Trip Permit at the following rates for each trip:  
           \$12 - Up to 50 miles  
           \$48 - More than 50 miles
- New York* - Straight Trucks..... \$ 5.00  
           Tractor Trailer Combination..... \$10.00  
       Plus: 18,001-28,000..... \$.010 per mile  
             28,001-38,000..... .015 per mile  
             38,001-48,000..... .020 per mile  
             48,001-58,000..... .025 per mile  
             58,001-68,000..... .030 per mile  
             68,001-80,000..... .035 per mile
4. *Ohio* - Straight Trucks..... \$.01 per mile  
           Tractor Trailer Combination..... \$.02 per mile

5. *Oregon* - 26,001-38,000 ..... \$.03 per mile  
                   38,001-52,000 ..... \$.04 per mile  
                   52,001-80,000 ..... \$.05 per mile
6. *Pennsylvania* - Apportioned and non-apportioned vehicles based in Pennsylvania grossing in excess of 26,000 are required to pay a Reciprocity Permit fee of \$36 per axle for travel into and thru Nebraska. In lieu of the Reciprocity Permit, a fee of \$15 will be assessed for each trip into Nebraska. Non-apportioned vehicles will be required to purchase a \$15 Trip Permit in addition to the Reciprocity Permit.
7. *Saskatchewan* - 26,001-50,000 ..... \$.10 per mile  
                                   50,001-74,000 ..... \$.15 per mile

## COLUMN IV.

1. *Alberta* - Metric Conversion for 1 Kilogram = 2.2046 pounds.
2. *Arkansas* - Maximum weight of Arkansas based vehicles allowed in Nebraska is 73,280 without a Reciprocity Permit. These permits allow the vehicle to carry 80,000 pounds at an annual fee of \$175 per vehicle and applies to both apportioned and non-apportioned vehicles.

## COLUMN V.

1. *Mississippi* - No tolerance (except 2,000 pounds tolerance on liquified compressed gas).

## COLUMN IX.

1. *Kansas* - December 31 is the passenger vehicle expiration date *except* for staggered registrations which expire the last day of expiration month.

## COLUMN X.

1. *Illinois* - Changes each year but not beyond March 1.
2. *Kansas* - Staggered registrations with no extensions.  
    Others - February 16 with March 1 enforcement date.

3. *Mississippi* - Enforcement date of the 16th of the month following the month of expiration.
4. *Prince Edward Island* - Discretion of the Minister with a maximum of 30 days.

## COLUMN XI.

1. *Alabama, New York, and Ohio* - These residents attending an accredited school in Nebraska will *not* be required to obtain a Nebraska plate and registration while in attendance at that institution.

DEPARTMENT OF MOTOR VEHICLES  
STATE OF NEBRASKA  
LINCOLN 68509  
(402) 471-2281  
MEMORANDUM

TO: All Carrier Enforcement Officers  
FROM: Interstate Registration Section  
DATE: October 27, 1982  
SUBJECT: Arizona Motor Carrier Permit

Effective November 1, 1982, Nebraska will begin charging Arizona based vehicles a Motor Carrier Permit comparable to the permit fee being charged to Nebraska based vehicles operating in Arizona.

The permit fee is to be charged on all vehicles having a combined gross weight of more than 12,000 pounds, including apportioned carriers.

An apportioned vehicle having a combined gross weight of 12,000 pounds or more will be required to purchase an Arizona Motor Carrier Permit only. A non-apportioned vehicle having a combined gross weight of 12,000 to 26,000 pounds will be required to purchase an Arizona Motor Carrier Permit only. A non-apportioned vehicle having a combined gross weight of more than 26,000 pounds will be required to purchase a Prorate Trip Permit *plus* an Arizona Motor Carrier Permit.

MOTOR CARRIER PERMIT FEES:

\$12 for up to 50 miles operated on Nebraska Highways  
\$48 for more than 50 miles operated on Nebraska Highways

Effective January 1, 1983, carriers not obtaining the Motor Carrier Permit should be cited for violation of Nebraska Statute 60-305.02.

If you have any questions, please feel free to call me at 402-471-3891.

ARKANSAS

TRUCKS AND BUSES

*An Arkansas licensed vehicle (prorated or non-prorated) licensed or grossing in excess of 73,280 pounds not displaying reciprocity decal from Nebraska on side of vehicle must purchase a 5¢ a mile trip permit. This is in addition to the 72 hour \$25.00 prorate permit if vehicle is not prorated with Nebraska.*

A vehicle regardless of State of license, leased to an operator from Arkansas, that has a vehicle or combination of vehicles, that grosses in excess of 26,000 pounds empty or loaded, or any power unit with three (3) axles or more regardless of weight, if not prorated with Nebraska, must purchase a 72 hour \$25.00 prorate permit.

FARM PLATES

*Note: Farm plated truck tractors shall be treated the same as commercial licensed vehicles for trip permit purpose.*

SEE ATTACHMENTS



# PENNSYLVANIA

## TRUCKS AND BUSES

A *Pennsylvania licensed vehicle* (prorated or non-prorated) licensed or grossing in excess of 26,000 pounds not displaying reciprocity decal from Nebraska on side of vehicle must purchase a \$15.00 trip permit. *This is in addition to a \$15.00 72 hour prorate permit if vehicle is not prorated with Nebraska.*

A vehicle regardless of State of license, leased to an operator from Pennsylvania that has a vehicle having three (3) axles or more on the power unit or grossing in excess of 26,000 pounds, empty or loaded, must prorate with Nebraska or purchase a 72 hour \$15.00 prorate permit.

## NOTE - FARM PLATE

Farm plated Pennsylvania trucks and farm plated truck-tractor combinations do not need prorate or reciprocity permits of any kind.

SEE ATTACHMENT

# NEBRASKA RECIPROCITY QUALIFICATIONS

YEAR 19\_\_

## PENNSYLVANIA: Complete Sections A & B

Nebraska requires the payment of a \$36 per axle fee on Pennsylvania plated vehicles having a combined gross weight or registered combined gross weight in excess of 26,000 pounds, used on Nebraska highways and which are required to be registered for operation in Nebraska.

Carrier: ~~Using~~ truck tractors and combinations need to anticipate the number of axles that will be used in combination during the year. For the purpose of this tax, the front wheels on any vehicle are considered to be an axle.

## ARKANSAS: Complete Sections A & C

Nebraska requires the payment of an annual \$175 fee on Arkansas plated vehicles having a combined gross weight or registered combined gross weight in excess of 73,200 pounds used on Nebraska highways.

## SECTION A

Name	TRP Account #		
Address	City	State	Zip Code

## SECTION B

Indicate number of stickers required in each category.

Number of Vehicles	Number of Axles By Category	Amount Due By Category	STATE OFFICE USE ONLY
2 axles	x 2	= \$36 = \$	2 axles
3 axles	x 3	= \$36 = \$	3 axles
4 axles	x 4	= \$36 = \$	4 axles
5 axles	x 5	= \$36 = \$	5 axles
6 axles	x 6	= \$36 = \$	6 axles
Total Axles		Total Due	Date
			Check <input type="checkbox"/> MC <input type="checkbox"/> Cash
			Check #

## SECTION C

Number of Stickers x \$175 = \$ Total Fees Due

ALL CHECKS NEED TO BE CERTIFIED. Return to  
Department of Motor Vehicles  
Interstate Registration Section  
P. O. Box 94785  
Lincoln, NE 68509

DPV-03-S  
11-83

STATE OFFICE USE ONLY	
Sticker #	
Date	
Check <input type="checkbox"/> MC <input type="checkbox"/> Cash	
Check #	

only need 1 sticker  
22 Col. 6-12-84

## EXHIBIT B

## Nebraska Trip Permits for 1983 &amp; 1984

**PRORATION, MILEAGE AND FUEL PERMIT**

Date issued 11-17-1984 **STATE OF NEBRASKA DEPARTMENT OF ROADS PERMIT NO.** 119803

☒ Proration, Recip. or Mileage Fee \$ 9.00  
☐ Fuel Permit Fee \$ 0.00

**TOTAL FEES COLLECTED \$ 9.00**

**PRORATE - MILEAGE**  
 ISSUING FEE \$ 9.00  
 FUEL ISSUING FEE (10¢/mi) TOTAL \$ 9.90

**DESIGNATE THE STATE THAT FEE IS CHARGED FROM**  
 OVER 25,000 POUNDS ☐ UNDER 25,000 POUNDS ☐ Other

Mark Dennis Columbia, Missouri  
Robert Lee St. Louis  
Robert Lee St. Louis  
Robert Lee St. Louis

**TRIP FROM** Lincoln, Nebr  
**TO** St. Louis, Mo  
**TOTAL MILES** 450

**STATION NO.** 83 **ATTENDING** Jan

OR Form 248, Apr 83

## EXHIBIT C

**PRORATION, MILEAGE AND FUEL PERMIT**

Date issued 11-2-1983 **STATE OF NEBRASKA DEPARTMENT OF ROADS PERMIT NO.** 119803

☒ Proration and/or Mileage Fee \$ 9.00  
☐ Fuel Permit Fee \$ 0.00

**TOTAL FEES COLLECTED \$ 9.00**

**PRORATE - MILEAGE**  
 ISSUING FEE \$ 9.00  
 FUEL ISSUING FEE (10¢/mi) TOTAL \$ 9.90

**DESIGNATE THE STATE THAT FEE IS CHARGED FROM**  
 OVER 25,000 POUNDS ☐ UNDER 25,000 POUNDS ☐ Other

Mark Dennis Columbia, Missouri  
Robert Lee St. Louis  
Robert Lee St. Louis  
Robert Lee St. Louis

**TRIP FROM** Lincoln, Nebr  
**TO** St. Louis, Mo  
**TOTAL MILES** 450

**STATION NO.** 83 **ATTENDING** Jan

OR Form 248, Apr 83

IN THE DISTRICT COURT OF LANCASTER COUNTY,  
NEBRASKA

\_\_\_\_\_  
Docket 390      Page 26  
\_\_\_\_\_

MARK E. DENNIS, d/b/a DENNIS TRUCKING, *et al*,  
Plaintiff

vs.

STATE OF NEBRASKA, *et al*,  
Defendant.

ORDER

The motion of the plaintiff to certify a class, the motion of the defendants to strike portions of the amended petition; and defendants' motion to strike plaintiff's motion to certify class and plaintiff's objection to motion to strike came on for hearing on the 30th day of August, 1985, upon the pleadings and files with all counsel present. The matters were argued and briefs now having been submitted and the Court being duly advised in the premises finds as follows:

1. That filing number 5, the motion of the plaintiff to certify class, should be and hereby is overruled.
2. That filing number 7, the motion of defendants to strike plaintiff's motion to certify the class, should be and hereby is sustained.
3. Filing number 6, motion of defendants to strike, should be and hereby is sustained as to paragraphs 1, 2, 4 and 7 of said motion and the balance of said motion is overruled.
4. That in view of the findings of the Court that filings number 8 and 9 are moot.
5. The Court finds that the plaintiff has included matters upon his first amended petition upon which the Court ruled

on June 17, 1985, and if plaintiff continues to allege said matters in a second amended petition that the case should be dismissed at plaintiff's cost.

IT IS FURTHER ORDERED that plaintiff shall be given 21 days in which to file a second amended petition deleting therefrom the matters the Court has ruled in this order. Upon failure to file a second amended petition within said time, the petition shall stand dismissed at plaintiff's costs.

6. If plaintiff files a second amended petition within the time specified herein the defendant shall have ten days to further plead.

IT IS SO ORDERED.

Dated this 19th day of November, 1985.

BY THE COURT:

/s/ Dale E. Fahrnbruch  
District Judge



IN THE DISTRICT COURT OF LANCASTER COUNTY  
STATE OF NEBRASKA

Docket 390 Page 26

MARK E. DENNIS, doing business as Dennis Trucking,  
*Plaintiff,*

v.

STATE OF NEBRASKA,

and

HOLLY JENSEN, Individually and as Director, Nebraska Department of Motor Vehicles,

and

LOU LAMBERTY, Individually and as Director, Nebraska Department of Roads,

and

KAY ORR, Individually and as Nebraska State Treasurer,  
*Defendants.*

SECOND AMENDED PETITION

1. This is an action for a declaratory judgment pursuant to Neb. Rev. Stat. §25-21,149 *et seq.* to declare retaliatory taxes imposed by Neb. Rev. Stat. §§60-305.02 and 60-305.03 unconstitutional, and to enjoin the defendants from enforcing and collecting the tax.

PARTIES

2. Plaintiff Mark E. Dennis owns and operates Dennis Trucking, a sole proprietorship with its principal place of business in Ohio. He is an owner of a nonresident vehicle for purposes of the taxes and fees imposed under Sections 60-305.02 and 60-305.03, which vehicle is duly authorized to operate in the State of Nebraska.

3. The defendants are the State of Nebraska and various individual State officials responsible for the implementation, collection, and administration of the retaliatory taxes and fees at issue in this case. Defendant Holly Jensen is the Director of Motor Vehicles. The Department of Motor Vehicles is the State agency which has authority, pursuant to Neb. Rev. Stat. §§60-305.02 and 60-305.03, to implement the retaliatory taxes and fees authorized in those sections. The Department of Motor Vehicles is also the State agency which assesses and enforces those retaliatory taxes and fees.

4. Defendant Lou Lamberty is the Director of the Department of Roads. The Department of Roads is the State agency which has authority, pursuant to Neb. Rev. Stat. §60-305.03(1), to act as agent for the Department of Motor Vehicles in collecting the retaliatory taxes and fees being challenged in this case.

5. Defendant Kay Orr is the State Treasurer of Nebraska. The State Treasurer is directed, pursuant to Neb. Rev. Stat. §60-305.03, to place the proceeds of the retaliatory taxes and fees at issue in this case in the Highway Cash Fund.

JURISDICTION

6. This Court has jurisdiction over this action under Article V, §9 of the Nebraska Constitution and Neb. Rev. Stat. §24-302.

FACTS

7. The State of Nebraska requires Nebraska resident motor carriers who own trucks and related equipment to register that equipment with the State and pay an annual registration fee therefor. Non-resident motor carriers from 30 states pay a pro-rated annual registration fee to Nebraska through the International Registration Plan (IRP). Under the IRP, a carrier pays a registration fee solely to its base state, which fee is then divided between the other member

states in which it operates. Nonresident motor carriers from all non-IRP states pay pro-rated annual registration fees to Nebraska under various reciprocity agreements, or are permitted to operate in Nebraska without payment of an annual fee pursuant to a reciprocity agreement. Thus, carriers from all states, including Nebraska, must in some manner fulfill Nebraska's registration requirements.

8. In addition to the registration fees described in paragraph 7, Nebraska imposes a "retaliatory" tax solely on owner of motor vehicles registered in other states as follows:

Trucks, truck-tractors, semitrailers, trailers, or buses, from states other than Nebraska, entering Nebraska shall be required to comply with all the laws and regulations of any nature imposed on Nebraska trucks, truck-tractors, semitrailers, trailers, or buses, and to comply with all the requirements as to payment of all license fees, permit fees, and fees of whatever character which owners of trucks, truck-tractors, semitrailers, trailers, or buses, owned and operated in Nebraska, are required to pay when operating in such foreign state, unless the state or states, in which such trucks, truck-tractors, semitrailers, trailers, or buses are domiciled, grant reciprocity comparable to that extended by the laws of Nebraska.

Neb. Rev. Stat. §60-305.02.

9. The statute further provides:

In case a foreign state or territory is not reciprocal as to license fees on commercial trucks, truck-tractors, semitrailers, trailers, or buses, the owners of such nonresident vehicles from those states or territories will be required to pay the same license fees as are charged residents of this state in such foreign state or territory. In case no fees are charged in Nebraska on trucks, truck-tractors, semitrailers, trailers, or buses, other than

license fees, and the reciprocity law of any other foreign state territory does not act to exempt Nebraska trucks, truck-tractors, semitrailers, trailers, or buses operating in that state from payment of all fees whatsoever, the owners of such foreign truck, truck-tractors, semitrailers, trailers, or buses shall be required to pay a fee in an amount equal to the fee of whatever character, other than license fee, is charged by such other state to foreign trucks, truck-tractors, semitrailers, trailers, or buses; . . .

Neb. Rev. Stat. §60-305.03.

10. Sections 60-305.02 and 60-305.03 authorize the Nebraska Department of Motor Vehicles to monitor the taxes and fees imposed on Nebraska carriers by other states and to implement retaliatory taxes and fees against carriers whose vehicles are registered in other states as it sees fit. The Department of Roads is authorized to collect the taxes and fees. The statutes further provide that the proceeds of the retaliatory taxes and fees collected under Sections 60-305.02 and 60-305.03 shall be remitted to the State Treasurer, who shall in turn place the money in the Highway Cash Fund.

11. The Nebraska Department of Motor Vehicles has implemented Sections 60-305.02 and 60-305.03 by imposing retaliatory taxes and fees on motor carriers whose vehicles are registered in any one or more of nine states. Thus, motor carriers whose vehicles are registered in Arkansas, Pennsylvania, Arizona, Oregon, Idaho, Nevada, Wyoming, Ohio and New York must, in addition to registration fees and fuel taxes, pay retaliatory taxes and fees to the Department of Roads. The 1984 Reciprocity Manual of the Department of Motor Vehicles and various memoranda of the Department setting forth the amounts of these fees are attached hereto as Exhibit A.



12. Motor carriers whose vehicles are registered in Nebraska pay no fees or taxes pursuant to Sections 60-305.02 and 60-305.03 for their use of the State's roads.

13. Plaintiff Mark E. Dennis owns one vehicle, which is registered in the State of Ohio. On November 17, 1984 Dennis paid the State of Nebraska a retaliatory tax of two cents per mile, or \$9.00 pursuant to Sections 60-305.02 and 60-305.03. See Exhibit B hereto. On November 2, 1983, Dennis paid a retaliatory tax of two cents per mile, or \$9.00. See Exhibit C. Dennis continues to operate in Nebraska, and therefore will continue to be subject to the retaliatory taxes imposed pursuant to Sections 60-305.02 and 60-305.03.

#### COUNT I

##### Unlawful Burden On Interstate Commerce

14. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 13 as if fully set forth herein.

15. The retaliatory taxes and fees imposed on plaintiff pursuant to Sections 60-305.02 and 60-305.03 constitute an unlawful burden on interstate commerce in violation of the Commerce Clause of Article I, Section 8, Clause 3 of the United States Constitution because they are imposed only on motor carriers whose vehicles are registered outside the State of Nebraska, while no comparable tax or fee is imposed on carriers whose vehicles are registered in the State of Nebraska. As such, the State by its taxing scheme favors domestic enterprises over enterprises from other states. Nebraska's retaliatory taxes and fees further impose an unlawful burden on interstate commerce because they vary in amount depending on the particular state of registration. On their face, therefore, the taxes and fees discriminate against interstate commerce. Moreover, the amount of the taxes and fees does not bear a reasonable relationship to the services provided by the State in connection therewith.

#### COUNT II

##### Denial of Privileges and Immunities

16. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 13 as if fully set forth herein.

17. The retaliatory taxes and fees imposed pursuant to Sections 60-305.02 and 60-305.03 constitute a denial of the privileges and immunities of the plaintiff, whose vehicle is registered outside the State of Nebraska, because they are imposed based on the taxpayer's residence in another state. No comparable tax is imposed on residents of Nebraska. Accordingly, these taxes discriminate against nonresidents in violation of the Privileges and Immunities Clause of Article IV, Section 2, Clause 1 of the United States Constitution.

#### COUNT III

##### Nebraska Constitution

18. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 13 as if fully set forth herein.

19. The retaliatory taxes and fees imposed pursuant to Sections 60-305.02 and 60-305.02 constitute a grant by the legislature of special and exclusive privileges, immunities, and franchises to corporations, associations, and individuals operating motor vehicles registered in Nebraska. They therefore violate Article III, Section 18 of the Constitution of the State of Nebraska.

#### COUNT IV

##### 42 U.S.C. §1983

20. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 13 as if fully set forth herein.

21. The actions of defendants set forth in Counts I and II above have been and will continue to be taken under



color of state law, custom and usage and threaten to deprive plaintiff of rights secured to him by the United States Constitution. Defendants are therefore liable to the plaintiff pursuant to 42 U.S.C. §1983.

### PRAYER FOR RELIEF

WHEREFORE, plaintiff prays that this Court grant him:

(a) A declaratory judgment pursuant to Neb. Rev. Stat. §25-21,149 declaring that the retaliatory taxes and fees authorized by Neb. Rev. Stat. §§60-305.02 and 60-305.03 violate the United States Constitution, the Nebraska Constitution, and federal law, and are therefore null and void;

(b) A permanent injunction enjoining the defendants from assessing or collecting retaliatory taxes and fees on non-resident motor carriers under Neb. Rev. Stat. §§60-305.02 and 60-305.03;

(c) Attorneys' fees and costs of this action; and

(d) Such other and further relief as this Court may deem just.

### OF COUNSEL:

BILLIG, SHER & JONES, P.C.  
2033 K Street, N.W.  
Suite 300  
Washington, D.C. 20006

/s/ Jacob Billig  
JACOB P. BILLIG  
RICHARD A. ALLEN  
DAVID F. SMITH  
Billig, Sher & Jones, P.C.  
2033 K Street, N.W.  
Suite 300  
Washington, D.C. 20006  
(202) 429-9090

/s/ Richard L. Spangler, Jr.  
RICHARD L. SPANGLER, JR.  
Woods, Aitken, Smith,  
Greer, Overcash  
& Spangler  
1500 American Charter  
Center  
206 South 13th Street  
Lincoln, Nebraska 68508  
Attorneys for Plaintiff

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above upon Defendant's attorney, Ruth Anne E. Galter, Assistant Attorney General of the State of Nebraska, 2115 State Capitol, Lincoln, Nebraska 68509, by United States Mail, postage prepaid, on this 6th Day of December, 1985.

/s/ Richard L. Spangler, Jr.  
Richard L. Spangler, Jr.  
Attorney for Plaintiff

**EXHIBIT A**

**1984 RECIPROCITY MANUAL**  
**INTERSTATE REGISTRATION SECTION**  
**DEPARTMENT OF MOTOR VEHICLES**

Nebraska is currently a member of the following apportioned registration agreements:

**INTERNATIONAL REGISTRATION PLAN**

Alabama	Iowa	Mississippi	Oregon	Utah
Alberta	Illinois	Missouri	Oklahoma	Virginia
Arizona	Kansas	Montana	Pennsylvania	Wisconsin
Arkansas	Kentucky	Nebraska	South Dakota	Wyoming
Colorado	Louisiana	North Dakota	Tennessee	
Idaho	Minnesota	North Carolina	Texas	

**UNIFORM PRORATE AND RECIPROCITY AGREEMENT**

Alaska	California	New Mexico
British Columbia	Nevada	Washington

Any carrier engaged in operating a fleet of one or more apportionable vehicles in the State of Nebraska may, in lieu of full county registration, license such a fleet under the apportioned registration laws of the State of Nebraska.

An apportionable vehicle shall mean any vehicle except recreational vehicles, vehicles displaying restricted plates, city pick up and delivery vehicles, buses used in transportation of chartered parties, and government owned vehicles, used in two or more jurisdictions that allocate or proportionally register vehicles and is used for the transportation of persons, for hire, or designed, used or maintained primarily for the transportation of property and:

1. is a power unit having a gross weight in excess of 26,000 pounds,

2. is a power unit having three or more axles (on the ground), regardless of weight, or
3. is used in combinations when weight of such combination exceeds 26,000 pounds gross vehicle weight.

COLUMN #	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII
	Jurisdiction with full license reciprocity for interstate movement	Trip Permit cost for non-apportioned power vehicle with 2 axles & grossing 26,000 lbs. or less.	Trip Permit cost for non-apportioned vehicle or combination of vehicles with a gross weight of more than 26,000 lbs. or any power unit with 3 or more axles.	Maximum weight allowed in Nebraska	Tolerance	License fees based upon	Non-passenger commercial/apportioned vehicles expiration date.	Enforcement date	Passenger vehicle expiration date	Passenger vehicle enforcement date	Passenger vehicle reciprocity	Farm plated vehicle reciprocity
Alabama			\$10	80000	none	CGW	9/30	11/16	9/30	11/16	no <sup>1</sup>	yes
Alaska			\$10	95000	none	unladen	12/31	6/1	monthly	none	no	yes
Arizona		*	\$10ST \$20CU <sup>2</sup>	80000	none	CGW	12/31	3/1	monthly	none	no	no
Arkansas			\$25 <sup>1</sup>	80000 <sup>2</sup>	1000	CGW	6/30	8/1	monthly	none	no	no
California			\$45	80000	none	unladen	12/31	3/1	monthly	none	yes	no
Colorado		\$10 <sup>1</sup>	\$25	80000	none	unladen	12/31	3/1	12/31	3/1	no	no
Connecticut	X			80000	2% lic. wt.	CGW	4/30	5/1	monthly	none	no	yes

Delaware	X			80000	none	CGW	Stag	Stag			no	yes
Dt of Co'lumbia	X			79000	none	CGW	3/31	4/1	3/31	4/1	no	yes
Florida	X			80000	none	CGW	Stag	Stag	Stag	none	no	yes
Georgia	X			80000	none	CGW	12/31	4/2	12/31	4/2	no	yes
Hawaii	X			80800	none	net load	12/31	4/1	12/31	4/1	no	no
Idaho			\$5 + .03 /mile	80000	none	CGW	12/31	3/1	monthly	none	no	no
Illinois			\$10	80000	none	CGW	12/31	3/1	12/31	<sup>1</sup>	no	no
Indiana	X			80000	none	CGW	2/28	3/1	monthly	none	no	yes
Iowa			\$10	80000	*	CGW	12/31	3/15	12/31	3/16	no	no
Kansas			\$20	80000	none	CGW	12/31	3/1	<sup>1</sup>	<sup>2</sup>	yes	no
Kentucky			\$25	80000	none	CGW	3/31	4/1	monthly	none	no	no
Louisiana			\$25	80000	5% lic. wt.	CGW	3/31	4/1	monthly	none	no	yes
Maine	X			80000	**	CGW	12/31	3/1	monthly	none	no	yes
Maryland	X			80000	none	CGW	4/30	5/1	3/31	4/1	no	yes
Massachusetts				80000	none	CGW	12/31	1/1	monthly	none	no	yes

\* 5% on non-agricultural, 25% on agricultural

\*\* 10% less than 15,000; 5% greater than 15,000



	Jurisdiction with full-license reciprocity for interstate movement.	Trip Permit cost for non-apportioned power vehicle with 2 axles & grossing 26,000 lbs. or less.	Trip Permit cost for non-apportioned vehicle or combination of vehicles with a gross weight of more than 26,000 lbs. or any power unit with 3 or more axles.	Maximum weight allowed in Nebraska	Tolerance	License fees based upon	Non-passenger commercial/apportioned vehicles expiration date.	Enforcement date	Passenger vehicle expiration date	Passenger vehicle reciprocity	Farm plated vehicle reciprocity
COLUMN #	I	II	III	IV	V	VI	VII	VIII	IX	XI	XII
Michigan	X			80000	none	CGW	2/28	3/1	3/31	4/1	no
Minnesota			\$10	80000	none	CGW	12/31	3/2	monthly	none	no
Mississippi	AUD MS as Recip. See X4-13 on Farm Plated Vehicles		\$10	80000	none <sup>1</sup>	CGW	10/31	11/1	monthly	3	no
Missouri			\$10	80000	none	CGW	12/31	3/1	monthly	none	no
Montana			\$10 ST \$15 CU	80000	none	CGW	12/31	2/16	monthly	none	no
Nevada			\$10 + mileage \$0.02 ST \$0.04 CU	80000	none	unladen	12/31	2/1	monthly	none	no

	X			80000	5% lic. wt.	CGW	3/31	4/1	monthly	none	no	yes
New Hampshire	X			80000	none	CGW	3/31	4/1	monthly	none	no	yes
New Jersey	X			80000	none	CGW	3/31	4/1	monthly	none	no	yes
New Mexico			\$15 ST \$25 CU	86400	none	CGW	12/31	3/3	12/31	3/3	no	no
New York	X	\$5 ST 10 CU + mile	\$5 ST \$10 CU + mile	80000	none	CGW	Stag	Stag	monthly	none	no <sup>1</sup>	no
North Carolina			\$15	80000	5%	CGW	12/31	2/16	12/31	2/16	yes	no
North Dakota			\$20	80000	none	CGW	12/31	2/2	3/31	5/1	no	yes
Ohio	X	\$0.01 ST \$0.02 CU	\$0.01 ST \$0.02 CU	80000	none	CGW	12/31	3/2	monthly	none	no <sup>1</sup>	no
Oklahoma			\$12	80000	none	CGW	12/31	3/2	monthly	none	no	yes
Oregon			\$10 + mile <sup>2</sup>	80000	none	gross wt	12/31	3/15	monthly	none	no	yes
Pennsylvania			\$15 <sup>2</sup>	80000	*	CGW	5/31	6/1	3/31	4/1	no	yes
Rhode Island	X			80000	none	CGW	3/31	4/1	3/31	4/1	no	yes

\* 3% on state highways; none on interstate system

	Jurisdiction with full-license reciprocity for interstate movement.	Trip Permit cost for non-apportioned power vehicle with 2 axles & grossing 26,000 lbs. or less.	Trip Permit cost for non-apportioned vehicle or combination of vehicles with a gross weight of more than 26,000 lbs. or any power unit with 3 or more axles.	Maximum weight allowed in Nebraska	Tolerance	License fees based upon	Non-passenger commercial/apportioned vehicles expiration date.	Enforcement date	Passenger vehicle expiration date	Passenger vehicle enforcement date	Passenger vehicle reciprocity	Farm plated vehicle reciprocity
COLUMN #	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII
South Carolina	X			80000	none	net load	11/15	12/1	monthly	none	yes	yes
South Dakota			\$15 ST \$25 CU	80000	5%	CGW	12/31	4/1	3/31	4/1	no	no
Tennessee			\$20	80000	none	CGW	3/31	4/15	monthly	none	no	no
Texas			\$25	80000	none	CGW	3/31	4/1	monthly	none	yes	yes
Utah			\$10 ST \$15 CU	80000	none	CGW	12/31	3/1	monthly	none	no	no
Vermont	X			80000	none	CGW	4/40	5/1	2/28	3/1	no	yes

Virginia			\$15	80000	5% lic. wt.	CGW	2/28	4/1	monthly	none	no	yes
Washington			\$15 ST \$25 CU	80000	none	CGW	12/31	3/1	monthly	none	no	yes
West Virginia	X			80000	5% lic. wt.	CGW	6/30	7/1	monthly	none	no	yes
Wisconsin			\$10	80000	none	CGW	12/31	3/1	monthly	none	no	no
Wyoming			\$10 + mileage .015 ST .030 CU	80000	none	unladen	12/31	3/1	12/31	3/1	yes	no
Alberta			\$10	80000	10000	CGW	3/31	5/1	3/31	4/30	no	yes
British Columbia			\$10	80000	none	CGW	2/28	3/1	2/28	3/1	no	no
Manitoba	X			80000	none	CGW	2/28	3/1	2/28	3/1	no	yes
New Brunswick		\$10	\$10	80000	none	CGW	12/31	4/1	12/31	4/1	no	no
Newfoundland		\$10	\$10	73280	none	CGW	3/31	5/1	3/31	4/1	no	no
Nova Scotia	X			80000	none	CGW	2/28	3/1	12/31	4/1	no	yes
Ontario	X			80000	none	CGW	12/31	4/1	12/31	2/28	no	yes
Prince Ed Isld		\$10	\$10	74000	none	CGW	3/31	4/1	3/31	*	no	no

COLUMN #	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII
	Jurisdiction with full license reciprocity for interstate movement.	Trip Permit cost for non-appointed power vehicle with 2 axles & grossing 20,000 lbs. or less.	Trip Permit cost for non-appointed vehicle or combination of vehicles with a gross weight of more than 20,000 lbs. or any power unit with 3 or more axles.	Maximum weight allowed in Nebraska	Tolerance	License fees based upon	Non-passenger commercial/departmental vehicle expiration date	Enforcement date	Passenger vehicle expiration date	Passenger vehicle enforcement date	Passenger vehicle reciprocity	Full plated vehicle reciprocity
Quebec		\$10	\$10	80000	none	CGW	2/28	3/1	2/28	3/1	no	no
Saskatchewan		\$10 + .05/mile	\$10 + mileage	74000	none	CGW	4/30	5/1	4/30	5/1	no	no
Mexico	X											

## CHART EXPLANATIONS

## COLUMN I.

Vehicles properly registered in these jurisdictions shall be granted full license reciprocity on interstate operations provided the vehicle is properly registered. Properly registered shall mean a vehicle licensed or registered in one of the following:

- The jurisdiction where the person registering the vehicle has his/her legal residence, or
- The jurisdiction in which a commercial vehicle is registered, where the operation in which such vehicle is used has a principal place of business therein, and from or in which the vehicle is most frequently dispatched, garaged, serviced, maintained, operated or otherwise controlled, and the vehicle is assigned to such principal place of business, or
- The jurisdiction where, because of an agreement or arrangement between two or more jurisdictions, or pursuant to a declaration, the person registering the commercial vehicle has licensed the vehicle as required by said jurisdiction.

Any vehicle not properly registered as defined above shall be subject to purchasing a Trip Permit based upon the jurisdiction determined as the "principal place of business".

## EXCEPTIONS:

1. Vehicles properly registered in *New York* and *Ohio* shall be required to purchase a Trip Permit and/or Mileage Permit. *New York* household goods carriers are exempt from Trip Permit and Mileage Permit fees up to 71,000 pounds.
2. *Mexico* - Vehicles properly registered in *Mexico* and used for private use will be given full license reciprocity



on interstate movement. However, if the vehicle is being used commercially, the owner will be required to purchase a Nebraska Non-Resident Commercial Registration from the County Treasurer.

### COLUMN II.

The Trip Permit fees are indicated for each jurisdiction and the permit is valid for 72 hours or for a single trip into the state. *The Trip Permit does not allow intrastate movement.* For purposes of the chart:

CU = Combinations of tractor semitrailers

ST = Straight trucks pulling any type of trailer

1. *Colorado* - Any non-apportioned power unit or combination of vehicles grossing 10,000 pounds or more but not exceeding 26,000 pounds will be required to purchase a Trip Permit for \$10.

2. <i>New York</i> - Straight Trucks.....	\$ 5.00
Tractor Trailer Combination.....	\$10.00
Plus: 18,001-28,000 .....	\$.010 per mile
28,001-38,000 .....	.015 per mile
38,001-48,000 .....	.020 per mile
48,001-58,000 .....	.025 per mile
58,001-68,000 .....	.030 per mile
68,001-78,000 .....	.035 per mile

3. *Ohio* - Straight Trucks..... \$.01 per mile  
Tractor Trailer Combination..... \$.02 per mile

4. *Arizona* - A non-apportioned Arizona vehicle having a combined gross weight of 12,000-26,000 pounds will be required to purchase an Arizona Motor Carrier Trip Permit at the following rates for each trip:

\$12 - Up to 50 miles

\$48 - More than 50 miles

### COLUMN III.

The Trip Permit fees are indicated for each jurisdiction and the permit is valid for 72 hours or for a single trip into the state. *The Trip Permit does not allow intrastate movement.* For purposes of the chart:

CU = Combinations of tractor semitrailers

ST = Straight trucks pulling any type of trailer

1. *Arkansas* - Maximum weight of Arkansas based vehicles allowed in Nebraska is 73,280 pounds without a Reciprocity Permit. These permits allow the vehicle to carry 80,000 pounds at an annual fee of \$175 per vehicle and applies to both apportioned and non-apportioned vehicles. In lieu of the Reciprocity Permit, a mileage fee of \$.05 per mile travelled in Nebraska may be purchased.

2. *Arizona* - A non-apportioned Arizona vehicle having a combined gross weight of more than 26,000 pounds will be required to purchase a Trip Permit *plus* an Arizona Motor Carrier Trip Permit at the following rates for each trip:

\$12 - Up to 50 miles

\$48 - More than 50 miles

<i>New York</i> - Straight Trucks .....	\$ 5.00
Tractor Trailer Combination.....	\$10.00
Plus: 18,001-28,000.....	\$.010 per mile
28,001-38,000.....	.015 per mile
38,001-48,000.....	.020 per mile
48,001-58,000.....	.025 per mile
58,001-68,000.....	.030 per mile
68,001-80,000.....	.035 per mile

4. *Ohio* - Straight Trucks..... \$.01 per mile  
Tractor Trailer Combination..... \$.02 per mile

5. *Oregon* - 26,001-38,000 ..... \$.03 per mile  
                   38,001-52,000 ..... \$.04 per mile  
                   52,001-80,000 ..... \$.05 per mile
6. *Pennsylvania* - Apportioned and non-apportioned vehicles based in Pennsylvania grossing in excess of 26,000 are required to pay a Reciprocity Permit fee of \$36 per axle for travel into and thru Nebraska. In lieu of the Reciprocity Permit, a fee of \$15 will be assessed for each trip into Nebraska. Non-apportioned vehicles will be required to purchase a \$15 Trip Permit in addition to the Reciprocity Permit.
7. *Saskatchewan* - 26,001-50,000 ..... \$.10 per mile  
                                   50,001-74,000 ..... \$.15 per mile

## COLUMN IV.

1. *Alberta* - Metric Conversion for 1 Kilogram = 2.2046 pounds.
2. *Arkansas* - Maximum weight of Arkansas based vehicles allowed in Nebraska is 73,280 without a Reciprocity Permit. These permits allow the vehicle to carry 80,000 pounds at an annual fee of \$175 per vehicle and applies to both apportioned and non-apportioned vehicles.

## COLUMN V.

1. *Mississippi* - No tolerance (except 2,000 pounds tolerance on liquified compressed gas).

## COLUMN IX.

1. *Kansas* - December 31 is the passenger vehicle expiration date *except* for staggered registrations which expire the last day of expiration month.

## COLUMN X.

1. *Illinois* - Changes each year but not beyond March 1.
2. *Kansas* - Staggered registrations with no extensions.  
       Others - February 16 with March 1 enforcement date.

3. *Mississippi* - Enforcement date of the 16th of the month following the month of expiration.
4. *Prince Edward Island* - Discretion of the Minister with a maximum of 30 days.

## COLUMN XI.

1. *Alabama, New York, and Ohio* - These residents attending an accredited school in Nebraska will *not* be required to obtain a Nebraska plate and registration while in attendance at that institution.

DEPARTMENT OF MOTOR VEHICLES  
STATE OF NEBRASKA  
LINCOLN 68509  
(402) 471-2281  
MEMORANDUM

TO: All Carrier Enforcement Officers  
FROM: Interstate Registration Section  
DATE: October 27, 1982  
SUBJECT: Arizona Motor Carrier Permit

Effective November 1, 1982, Nebraska will begin charging Arizona based vehicles a Motor Carrier Permit comparable to the permit fee being charged to Nebraska based vehicles operating in Arizona.

The permit fee is to be charged on all vehicles having a combined gross weight of more than 12,000 pounds, including apportioned carriers.

An apportioned vehicle having a combined gross weight of 12,000 pounds or more will be required to purchase an Arizona Motor Carrier Permit only. A non-apportioned vehicle having a combined gross weight of 12,000 to 26,000 pounds will be required to purchase an Arizona Motor Carrier Permit only. A non-apportioned vehicle having a combined gross weight of more than 26,000 pounds will be required to purchase a Prorate Trip Permit *plus* an Arizona Motor Carrier Permit.

**MOTOR CARRIER PERMIT FEES:**

\$12 for up to 50 miles operated on Nebraska Highways  
\$48 for more than 50 miles operated on Nebraska Highways

Effective January 1, 1983, carriers not obtaining the Motor Carrier Permit should be cited for violation of Nebraska Statute 60-305.02.

If you have any questions, please feel free to call me at 402-471-3891.

**ARKANSAS**

**TRUCKS AND BUSES**

*An Arkansas licensed vehicle (prorated or non-prorated) licensed or grossing in excess of 73,280 pounds not displaying reciprocity decal from Nebraska on side of vehicle must purchase a 5¢ a mile trip permit. This is in addition to the 72 hour \$25.00 prorate permit if vehicle is not prorated with Nebraska.*

A vehicle regardless of State of license, leased to an operator from Arkansas, that has a vehicle or combination of vehicles, that grosses in excess of 26,000 pounds empty or loaded, or any power unit with three (3) axles or more regardless of weight, if not prorated with Nebraska, must purchase a 72 hour \$25.00 prorate permit.

**FARM PLATES**

*Note: Farm plated truck tractors shall be treated the same as commercial licensed vehicles for trip permit purpose.*

**SEE ATTACHMENTS**



## PENNSYLVANIA

## TRUCKS AND BUSES

A *Pennsylvania licensed vehicle* (prorated or non-prorated) licensed or grossing in excess of 26,000 pounds not displaying reciprocity decal from Nebraska on side of vehicle must purchase a \$15.00 trip permit. This is in addition to a \$15.00 72 hour prorate permit if vehicle is not prorated with Nebraska.

A vehicle regardless of State of license, leased to an operator from Pennsylvania that has a vehicle having three (3) axles or more on the power unit or grossing in excess of 26,000 pounds, empty or loaded, must prorate with Nebraska or purchase a 72 hour \$15.00 prorate permit.

## NOTE - FARM PLATE

Farm plated Pennsylvania trucks and farm plated truck-tractor combinations do not need prorate or reciprocity permits of any kind.

SEE ATTACHMENT

## NEBRASKA RECIPROCITY QUALIFICATIONS

YEAR 19\_\_

## PENNSYLVANIA: Complete Sections A &amp; B

Nebraska requires the payment of a \$36 per axle fee on Pennsylvania plated vehicles having a combined gross weight or registered combined gross weight in excess of 26,000 pounds, used on Nebraska highways and which are required to be registered for operation in Nebraska.

Carriers using truck tractors and combinations need to anticipate the number of axles that will be used in combination during the year. For the purpose of this tax, the front wheels on any vehicle are considered to be on an axle.

## ARKANSAS: Complete Sections A &amp; C

Nebraska requires the payment of an annual \$175 fee on Arkansas plated vehicles having a combined gross weight or registered combined gross weight in excess of 73,200 pounds used on Nebraska highways.

## SECTION A

Name	TRF Account #		
Address	City	State	Zip Code

## SECTION B

Indicate number of stickers required in each category.

Number of Vehicles	Number of Axles By Category	Amount Due By Category	STATE OFFICE USE ONLY
2 axles _____	x 2 _____	= \$36 = \$ _____	2 axles _____
3 axles _____	x 3 _____	= \$36 = \$ _____	3 axles _____
4 axles _____	x 4 _____	= \$36 = \$ _____	4 axles _____
5 axles _____	x 5 _____	= \$36 = \$ _____	5 axles _____
6 axles _____	x 6 _____	= \$36 = \$ _____	6 axles _____
Total Axles _____		Total Due _____	Date _____ Check MC _____ Cash _____ Check TMC \$ _____

## SECTION C

Number of Stickers \_\_\_\_\_ x \$175 = \$ \_\_\_\_\_ Total Fees Due \_\_\_\_\_

ALL CHECKS NEED TO BE CERTIFIED. Return to  
Department of Motor Vehicles  
Interstate Registration Section  
P. O. Box 94785  
Lincoln, NE 68509

DMV-03-52  
11-83

STATE OFFICE USE ONLY	
Sticker #s _____	
Date _____	
Check MC _____ Cash _____	
Check TMC \$ _____	

only one sticker per vehicle  
22 Col. 1st Div. 212-1  
per person



IN THE DISTRICT COURT OF LANCASTER COUNTY,  
NEBRASKA

Docket 390 Page 26

MARK E. DENNIS, doing business as Dennis Trucking,  
*Plaintiff,*  
v.

STATE OF NEBRASKA; HOLLY JENSEN, Individually and  
as Director, Nebraska Department of Motor Vehicles;  
LOU LAMBERTY, Individually and as Director, Nebraska  
Department of Roads; and KAY ORR, Individually and as  
Nebraska State Treasurer,  
*Defendants.*

ANSWER TO  
SECOND AMENDED PETITION

COME NOW the defendants, by and through their  
attorneys, and for answer to the plaintiff's Second  
Amended Petition admit, deny, and allege as follows:

1. Defendants admit the factual allegations contained in  
paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and  
14 of plaintiff's Second Amended Petition.

2. Defendants deny all conclusions of law contained in  
paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and  
14 of plaintiff's Second Amended Petition.

3. Defendants deny the allegations contained in para-  
graphs 15, 16, 17, 18, 19, 20, and 21 of plaintiff's Second  
Amended Petition, except for allegations hereinabove ad-  
mitted, for the reason that said allegations are untrue and  
are conclusions of law of the pleader.

3. Defendants allege as follows:

a. The State of Nebraska requires Nebraska resident  
motor carriers who own trucks and related equipment,  
and who desire to operate the same within the State  
of Nebraska, to register with the State of Nebraska  
at the county level and to pay an ad valorem property  
tax;

b. In lieu of the registration described in paragraph  
(a) above, Nebraska resident motor carriers may reg-  
ister said vehicles and equipment and pay an annual  
prorated registration fee to the State of Nebraska  
pursuant to the International Registration Plan (IRP);

c. Motor carriers in member jurisdictions of the In-  
ternational Registration Plan, choosing to register  
their fleets of vehicles pursuant to the IRP, pay a  
prorated annual registration fee to the State of Ne-  
braska if said vehicles are operate in Nebraska. Under  
the IRP, a carrier pays a registration fee to its base  
state, which fee is then divided between other member  
jurisdictions in which it operates;

d. Owners of non-apportioned vehicles registered in  
member jurisdictions of the IRP pay registration fees  
to that jurisdiction according to its own statutes and  
laws;

e. Owners of vehicles registered in jurisdictions that  
are members of the Uniform Prorate and Reciprocity  
Agreement pay registration fees to that jurisdiction  
according to the Agreement or its statutes and laws;  
and

f. Vehicles registered in foreign jurisdictions and op-  
erated in Nebraska pay registration fees to the State  
of Nebraska as set forth in Exhibit A of the plaintiff's  
Second Amended Petition, or operate without the pay-  
ment of registration fees pursuant to negotiated  
agreements.



4. Defendants allege that the fees and taxes assessed pursuant to Neb.Rev.Stat. §§60-305.02 and 60-305.03 are constitutional in all respects.

WHEREFORE, defendants respectfully pray this court enter an order dismissing the plaintiff's Second Amended Petition; declaring and affirming that the fees and taxes assessed pursuant to Neb.Rev.Stat. §§60-305.02 and 60-305.03 are constitutional and proper in all respects; denying the request for a permanent injunction from the assessment or collection of said fees and taxes; to tax all costs to the plaintiff; and for such other and further relief as may be just and equitable.

STATE OF NEBRASKA; HOLLY  
JENSEN, Individually and as  
Director, Nebraska Department of  
Motor Vehicles; LOU LAMBERTY,  
Individually and as Director,  
Nebraska Department of Roads;  
and KAY ORR, Individually and  
as Nebraska State Treasurer,  
Defendants

By ROBERT M. SPIRE, No. 13977  
Attorney General

By /s/ Ruth Anne Evans  
Ruth Anne Evans, No. 15667  
Assistant Attorney General  
2115 State Capitol  
Lincoln, NE 68509-4906  
Telephone (402) 471-2682

*Attorneys for Defendants.*

### CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Answer to Second Amended Petition have been served upon the plaintiff by mailing said copies, first class postage prepaid, addressed to plaintiff's counsel of record, Jacob P. Billig, Richard A. Allen, and David F. Smith, 2033 K Street, Northwest, Suite 300, Washington, D.C. 20006; and Richard L. Spangler, Jr., 1500 American Charter Center, 206 South 13th Street, Lincoln, Nebraska, 68508, on this 19th day of December 1985.

/s/ Ruth Anne Evans  
Ruth Anne Evans  
Assistant Attorney General

IN THE DISTRICT COURT OF LANCASTER COUNTY,  
NEBRASKA

Docket 390 Page 26

MARK E. DENNIS, Doing Business as Dennis Trucking,  
*Plaintiff,*

v.

STATE OF NEBRASKA, *et al.,*  
*Defendants.*

STIPULATION

COME NOW the parties, by and through their attorneys,  
and stipulate as follows:

1. That the State of Nebraska, through the Department of Motor Vehicles, imposes retaliatory fees and taxes pursuant to Neb.Rev.Stat. §§60-305.02 and 60-305.03 on motor carriers whose vehicles are registered in the following nine states:

Arkansas	Pennsylvania
Arizona	Oregon
Idaho	Nevada
Wyoming	Ohio
New York	

2. That of the foregoing nine states, the following six states are member jurisdictions of the International Registration Plan ("IRP"):

Arkansas	Pennsylvania
Arizona	Oregon
Idaho	Wyoming

The State of Nebraska is also a member jurisdiction of the IRP.

3. That owners of vehicles which are based in member jurisdictions of the IRP may choose to operate and register their vehicles in Nebraska on an apportioned basis under the IRP, or they may choose to register their vehicles solely pursuant to the local laws of their state.

4. That owners of vehicles based in other member jurisdictions of the IRP who choose to register their vehicles in Nebraska pursuant to the IRP pay the applicable Nebraska registration fee on an apportioned basis. All such registration fees paid under the IRP are collected by the carrier's base state and distributed by the state to Nebraska and the other member jurisdictions in which the carrier operates. The base state apportions such fees among the member jurisdictions in which the carrier operates on a mileage basis. For example, if a Pennsylvania-based vehicle operated 20% of its total miles in Nebraska, its owner would pay to Pennsylvania (for distribution to Nebraska) a prorated Nebraska registration fee equal to 20% of the Nebraska registration fee applicable to the vehicle's weight class.

5. That owners of vehicles based in IRP member jurisdictions who do not choose to operate and be registered in Nebraska pursuant to the IRP must purchase a 72-hour trip permit in order to operate in Nebraska.

6. That owners of vehicles based in the IRP member jurisdictions described in paragraph 2 above, and operating in Nebraska, pay fees to Nebraska as follows:

**Arkansas**

- A. The owner of an Arkansas-based vehicle who chooses to apportion under the IRP must pay a prorated Nebraska registration fee to Nebraska in the manner described in paragraph 4 above.
- B. An owner of an Arkansas-registered vehicle not apportioned under the IRP must purchase a 72-hour

trip permit for a fee of \$25.00 in order to operate in Nebraska.

- C. In addition to the fees described in paragraphs A and B above, all owners of Arkansas-registered vehicles that weigh between 73,280 pounds and 80,000 pounds, whether apportioned or nonapportioned, must pay an annual reciprocity permit fee of \$175.00 per vehicle. In lieu of the \$175.00 fee, owners of Arkansas-registered vehicles may pay a fee of \$.05 per mile traveled in Nebraska. This fee mirrors a like charge imposed by Arkansas on owners of Nebraska-registered vehicles which operate in Arkansas.
- D. In this case, plaintiff does not contest the lawfulness of the registration fees set forth in paragraphs A and B above. Plaintiff does contest the lawfulness of the fees set forth in paragraph C above.

#### **Pennsylvania**

- A. An owner of a Pennsylvania-based vehicle who chooses to apportion under the IRP must pay a prorated Nebraska registration fee to Nebraska in the manner described in paragraph 4 above.
- B. An owner of a Pennsylvania-registered vehicle not apportioned under the IRP must purchase a 72-hour trip permit for a fee of \$15.00 in order to operate in Nebraska.
- C. In addition to the fees described in paragraphs A and B above, all owners of Pennsylvania-registered vehicles, whether apportioned or nonapportioned, are required to pay an annual per vehicle reciprocity permit fee of \$36.00 per axle for travel into and through Nebraska. In lieu of the \$36.00 per axle reciprocity permit fee described above, owners of Pennsylvania-registered vehicles may pay a reciprocity fee of \$15.00 for each trip into Nebraska. This fee mirrors a like charge imposed by Pennsylvania on owners of

Nebraska-registered vehicles which operate in Pennsylvania.

- D. In this case, plaintiff does not contest the lawfulness of the registration fees set forth in paragraphs A and B above. Plaintiff does contest the lawfulness of the fees set forth in paragraph C above.

#### **Arizona**

- A. An owner of an Arizona-based vehicle who chooses to apportion under the IRP must pay a prorated Nebraska registration fee to Nebraska in the manner described in paragraph 4 above.
- B. An owner of an Arizona-registered vehicle not apportioned under the IRP must purchase a 72-hour trip permit for a fee of \$10.00 (for a straight truck) or \$20.00 (for a tractor-trailer combination) in order to operate in Nebraska.
- C. In addition to the fees described in paragraphs A and B above, all owners of Arizona-registered vehicles having a combined gross weight of 12,000 pounds or more, whether apportioned or nonapportioned, are required to pay a fee of \$12.00 (for up to 50 miles operated on Nebraska highways) or \$48.00 (for more than 50 miles operated on Nebraska highways). This fee mirrors a like charge imposed by Arizona on owners of Nebraska-registered vehicles which operate in Arizona.
- D. In this case, plaintiff does not contest the lawfulness of the registration fees set forth in paragraphs A and B above. Plaintiff does contest the lawfulness of the fees set forth in paragraph C above.

#### **Oregon**

- A. An owner of an Oregon-based vehicle who chooses to apportion under the IRP must pay a prorated



Nebraska registration fee to Nebraska in the manner described in paragraph 4 above.

- B. An owner of an Oregon-registered vehicle not apportioned under the IRP must purchase a 72-hour trip permit for a fee of \$10.00 in order to operate in Nebraska.
- C. In addition, all owners of Oregon-registered vehicles not apportioned under the IRP are required to pay one of the following fees, depending on vehicle weight, in order to operate in Nebraska:
  - 26,001 to 38,000 pounds - \$.03 per mile
  - 28,001 to 52,000 pounds - \$.04 per mile
  - 52,001 to 80,000 pounds - \$.05 per mile

This fee mirrors a like charge imposed by Oregon on owners of Nebraska-registered vehicles which operate in Oregon.

- D. In this case, plaintiff does not contest the lawfulness of the registration fees set forth in paragraphs A and B above. Plaintiff does contest the lawfulness of the fees set forth in paragraph C above.

#### **Idaho**

- A. An owner of an Idaho-based vehicle who chooses to apportion under the IRP must pay a prorated Nebraska registration fee to Nebraska in the manner described in paragraph 4 above.
- B. An owner of an Idaho-registered vehicle not apportioned under the IRP must purchase a 72-hour trip permit for a fee of \$5.00 in order to operate in Nebraska.
- C. In addition, all owners of Idaho-registered vehicles not apportioned under the IRP are required to pay a fee of \$.03 per mile in order to operate in Nebraska. This fee mirrors a like charge imposed by

Idaho on owners of Nebraska-registered vehicles which operate in Idaho.

- D. In this case, plaintiff does not contest the lawfulness of the registration fees set forth in paragraphs A and B above. Plaintiff does contest the lawfulness of the fees set forth in paragraph C above.

#### **Wyoming**

- A. An owner of a Wyoming-based vehicle who chooses to apportion under the IRP must pay a prorated Nebraska registration fee to Nebraska in the manner described in paragraph 4 above.
- B. An owner of a Wyoming-registered vehicle not apportioned under the IRP must purchase a 72-hour trip permit for a fee of \$10.00 in order to operate in Nebraska.
- C. In addition, all owners of Wyoming-registered vehicles not apportioned under the IRP are required to pay a fee of \$.015 per mile (for straight trucks pulling any type of trailer) or \$.030 per mile (for a combination of a tractor and semitrailer) in order to operate in Nebraska. This fee mirrors a like charge imposed by Wyoming on owners of Nebraska-registered vehicles which operate in Wyoming.
- D. In this case, plaintiff does not contest the lawfulness of the registration fees set forth in paragraphs A and B above. Plaintiff does contest the lawfulness of the fees set forth in paragraph C above.

7. That owners of vehicles based in the State of Nevada may register those vehicles to operate in Nebraska pursuant to the Uniform Prorate and Reciprocity Agreement ("UPRA"). Such carriers must pay directly to Nebraska (rather than through their base state, as under the IRP) a prorated Nebraska registration fee calculated according to the percentage of the vehicle's total miles which are

operated in Nebraska. For example, the owner of a Nevada-based vehicle with 30% of its total miles operated in Nebraska would pay to Nebraska a prorated registration fee equal to 20% of the Nebraska registration fee applicable to the vehicle's weight class. Alternatively, owners of Nevada-based vehicles which operate in Nebraska may choose not to register their vehicles in Nebraska under the UPRA, but may instead choose to register their vehicles solely pursuant to the laws of Nevada.

- A. An owner of a Nevada-based vehicle who chooses to apportion under the UPRA must pay a prorated Nebraska registration fee to Nebraska in the manner described above.
  - B. An owner of a Nevada-registered vehicle not apportioned under the UPRA must purchase a 72-hour trip permit for a fee of \$10.00 in order to operate in Nebraska.
  - C. In addition, all owners of Nevada-registered vehicles not apportioned under the UPRA must pay a fee of \$.02 per mile (for straight trucks) or \$.04 per mile (for a combination of a tractor and semitrailer). This fee mirrors a like charge imposed by Nevada on owners of Nebraska-registered vehicles which operate in Nevada.
  - D. In this case, plaintiff does not contest the lawfulness of the registration fees set forth in paragraphs A and B above. Plaintiff does contest the lawfulness of the fees set forth in paragraph C above.
8. That pursuant to a reciprocity agreement between the State of Nebraska and the State of New York, owners of vehicles which are registered in the State of New York are granted full license reciprocity for interstate movement in Nebraska and accordingly pay no registration fees to Nebraska. However, when operating in Nebraska, owners of such vehicles must pay a fee equal to the sum of \$5.00

(for straight trucks) or \$10.00 (for tractor-trailer combinations) per trip *plus*:

18,001 to 28,000 pounds	- \$.010 per mile
28,001 to 38,000 pounds	- \$.015 per mile
38,001 to 48,000 pounds	- \$.020 per mile
48,001 to 58,000 pounds	- \$.025 per mile
58,001 to 68,000 pounds	- \$.030 per mile
68,001 to 80,000 pounds	- \$.035 per mile

This fee mirrors a like charge imposed by New York on owners of Nebraska-registered vehicles which operate in New York. Plaintiff contests the lawfulness of this fee.

9. That pursuant to a reciprocity agreement between the State of Nebraska and the State of Ohio, owners of vehicles which are registered in the State of Ohio are granted full license reciprocity for interstate movement in Nebraska and accordingly pay no registration fees to Nebraska. However, when operating in Nebraska, owners of such vehicles must pay a fee of one cent per mile (straight trucks) or two cents per mile (tractor-trailer combination). This fee mirrors a like charge imposed by Ohio on owners of Nebraska-registered vehicles which operate in Ohio. Plaintiff contests the lawfulness of this fee.

10. Plaintiff, Mark E. Dennis, doing business as Dennis Trucking, pays no other fees to the State of Nebraska other than the one cent or two cent per mile fee described in paragraph 9 above.

11. That unless otherwise specified, the fees and taxes set forth in paragraphs 6-9 above apply only to vehicles with a gross weight in excess of 26,000 pounds.

12. That the trip permits described in paragraphs 6-7 are valid for 72 hours or for a single trip into the State of Nebraska. The trip permit does not allow intrastate movement.

13. That motor carriers whose vehicles are registered in the nine states set forth in paragraph 1 above, and in



all other states, are required to pay a quarterly Interstate Motor Carrier Fuel Tax of 17.2 cents for each gallon of fuel consumed or a fee of \$10 for a 72-hour fuel permit while operating in the State of Nebraska. Plaintiff does not contest the lawfulness of the fuel tax in this case.

14. That owners of vehicles which are based or registered in the State of Nebraska do not pay any of the fees or taxes described in paragraphs 6-13 above, with the exception of Nebraska registration fees (which may or may not be apportioned under the IRP) and the Nebraska Interstate Motor Carrier Fuel Tax.

15. That the taxes and fees at issue are imposed by the State of Nebraska based upon the jurisdiction in which a vehicle is registered.

16. That plaintiff, Mark E. Dennis, doing business as Dennis Trucking, is a motor carrier who operates one tractor and two trailers in interstate commerce. Mr. Dennis' tractor is registered in Ohio, and he is therefore subject to the tax imposed under Neb.Rev.Stat. §§60-305.02 and 60-305.03 when he operates in Nebraska. He has paid to Nebraska the following taxes pursuant to that statute: \$9.00 on November 17, 1984; \$9.60 on December 9, 1983; \$9.00 on December 4, 1983; \$9.00 on November 2, 1983; \$7.00 on September 13, 1983; and \$9.00 on June 1, 1983.

17. That if the plaintiff would have registered his 1979 Kenworth truck-tractor, with gross vehicle weight of 80,000 pounds, in the State of Nebraska, his Nebraska registration fee, calculated pursuant to Neb.Rev.Stat. §60-331, would have been \$930.00 each year in 1983 and 1984.

18. That the plaintiff paid registration fees to the State of Ohio, for registration of the Kenworth tractor-trailer, in the amount of \$413 each year in 1983 and 1984.

19. That the plaintiff has paid the the State of Ohio the Ohio mileage tax referred to in paragraph 9 above in connection with the operation of his tractor-trailer in the State

of Ohio. The amount of such tax payments in 1984 was \$106.

STATE OF NEBRASKA, et al.,  
Defendants,

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